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VALUATION OF UNREGISTERED LANDS

A Policy Guide

SECURING LAND AND PROPERTY RIGHTS FOR ALL

VALUATION OF UNREGISTERED LANDS

A Policy Guide

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A Policy Guide

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ACRONYMS



AfDB	African Development Bank
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
FAO	Food and Agriculture Organization of the United Nations
FIG	International Federation of Surveyors
GLTN	Global Land Tool Network
HLRN	Housing and Land Rights Network
HRC	Human Rights Council
IFI	International financial institution
IFRS	International Financial Reporting Standards
INGO	International non-government organization
IVSC	International Valuation Standards Council
LSLBI	Large-scale land-based investments
NUA	New Urban Agenda
PPHPZ	People's Process for Housing & Poverty in Zambia
RAI	Responsible Agricultural Investment in the Context of Food Security and Nutrition
RICS	Royal Institution of Chartered Surveyors
SDG	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UNECA	United Nations Economic Commission for Africa
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security



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PREAMBLE

This guide is intended to contribute to the achieving the SDGs by identifying policies, principles and some valuation-related remedies that are considered fit-for-purpose for policy makers and practitioners involved in valuing unregistered lands in developing countries.

The Global Land Tool Networks' "continuum of land rights" approach to tenure security describes a range of land rights (e.g. formal, informal, customary), in which the registered ownership of land is just one of many forms of tenure. This approach in turn needs an accepted method of valuation for the range of unregistered lands. It should conform to professional standards and consider communities' values.

The contents of this guide have been under discussion by the international valuation profession for over four years; in that time, valuation principles, frameworks and several methods have been identified which can be used to value unregistered lands. However, because there are unique challenges in valuing unregistered lands, the guide gives only a few possible tools and methods, and a knowledge gap remains to be filled.

The purpose of this guide is to support developing countries that have unregistered lands to be able to value these lands. In many developing countries, only 30 per cent of land rights are registered (UN-Habitat/ GLTN and IIRR 2012) and the rest are unregistered lands that may be held by poor people. Yet there is a dire need for governments and individuals to be able to value these lands. Valuation is necessary to improve control over land and property in a way that builds equitable access to financial services and mobilizes resources for economic growth and poverty reduction. Valuation tools are critical to upgrade informal settlements, support the resettlement of displaced people and for investment

and development projects. It is vital for improving transparency in non-transparent land markets, which disadvantage the poor. Without a clear approach for valuing their land, poor occupants may lose out on getting the right value for their land and weaken the local community economy and this could entrench poverty even further in their lives.

The need to be able to value unregistered lands is intensifying. Population growth and urban growth rates are increasing the pressure on land and the risk of evictions. More urban and rural development projects are coming on line that need land acquisition, fair involuntary relocation and payment packages, as well as compensation for being moved. Large-scale land-based investments for food and bio-fuels are on the rise and impacting local occupants. Sea-level rise because of climate change is an emerging threat that will involve large-scale relocations of communities. Because of conflict, the international community is currently managing the largest number of displaced people recorded for many decades, all of whom need land for shelter and/or livelihoods.

International organizations have set global goals to address these issues: the Sustainable Development Goals (SDGs) for 2030 (United Nations, 2015) address food security, land degradation, women's land rights, poverty, urban and rural development, housing and displacement, among other things. Proper valuations are critical to achieve these goals in an equitable, efficient and effective manner. However, valuation is only one aspect.

While the guide will be of immediate interest to those involved in both public and private sector land and property valuation in developing countries,



An informal settlement against a backdrop of skyscrapers in Manila, Philippines. Photo © Gerald Nicholas.

there are many other stakeholders who should also benefit. These include: policy makers in government departments involved in large development projects; local authorities; United Nations agencies; international finance institutions; investors; property developers; banks; INGOs and NGOs; citizens, land owners, local communities and women's groups.

While there are many texts available on the subject, they tend to be focused on the valuation of registered lands. This guide only focuses on the valuation of unregistered lands in the developing world, where there is the most urgent and large-scale need. A separate guide is still needed for unregistered lands in developed countries that have their own specificities. While there is rich literature on developing countries' land issues and challenges and human rights standards, this needs to be more closely linked to the valuation of unregistered urban and rural land. This guide will address this gap. This is not a manual about how to undertake valuations at country level. Rather it provides guiding principles for the valuation of unregistered lands by building

on the international human rights standards for land: the Universal Declaration of Human Rights, the New Urban Agenda and the few international standards on the subject such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) (FAO, 2012) through to the International Valuation Standards (International Valuation Standards Council: 2017) and domesticates these principles at country level.

It is hoped that this guide will encourage governments, valuers and other stakeholders to increasingly work in this area. It is meant to provide principles and policies for people to progressively undertake valuations of unregistered lands. It is intended to assist in the achievement of professional-level valuations of unregistered lands and enable users of this guide to discern when this has not been achieved. Lessons learnt and solutions should then be documented leading to detailed manuals on how to better value unregistered lands in the future, and thereby underpin global sustainable development.

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The purpose of this guide is to support developing countries that have unregistered lands to be able to value these lands. In many developing countries, only 30 per cent of land rights are registered (UN-Habitat/GLTN and IIRR, 2012). Valuation has generally been focused only on registered lands. It has not sufficiently supported the unregistered land rights and claims, often held by poor people. There is a dire need for governments and individuals to be able to value unregistered lands. Valuation is necessary to improve control over land and property in a way that builds equitable access to financial services and mobilizes resources for economic growth and poverty reduction. It is critical in the process of upgrading informal settlements, in compulsory purchases and fair compensation, and for investment and development projects. It is vital for improving transparency in non-transparent land markets. Without a clear approach to valuing their unregistered lands, poor occupants may lose out on getting the correct value for their lands and this could entrench poverty even further in their lives.

PART 1: MAIN MESSAGES: WHY THE FOCUS ON THE VALUATION OF UNREGISTERED LANDS

- 1) United Nations Member States, the national and international valuation industry and GLTN partners expressed the need for a guide on the valuation of unregistered lands in developing countries, as a pro-poor tool to further implement the continuum of land rights.
- 2) The purpose of this guide is to support policy makers, practitioners and other stakeholders in developing countries to develop policies for the valuation of unregistered lands, and to undertake the valuation of these lands; 70 per cent of most developing countries' land rights are unregistered. While the guide will be of immediate interest to those involved in both public and private sector land and property valuation in developing countries, there are many other stakeholders who should also benefit. These include: policy makers in government departments involved in large development projects; local authorities; United Nations agencies; international finance institutions; investors; property developers; banks; INGOs and NGOs; local communities and women's groups.
- 3) There is a wealth of knowledge on the valuation of registered lands, but not on unregistered lands in developing countries. This is not a manual about how to undertake valuations at country level. Rather, it gives guiding principles for the valuation of unregistered lands that build on knowledge from registered lands, human rights standards and the International Valuation Standards (International Valuation Standards Council, 2017). This guide encourages the adaptation of these principles to the local context at country level. Much work remains to be done on developing the valuation manuals.
- 4) A wide range of people need valuations of unregistered lands, for example governments, international development banks, local authorities, those acquiring land such as investors, those being evicted, and ordinary people buying and selling or inheriting their land. Valuation of unregistered lands are needed for public and private sector purposes, for city densification and extension, slum upgrading, fair resettlement and compensation, migration management, large development projects, natural resources extraction, LSLBI, smallholder farmers' credit, sales, leases, women's inheritance etc.



- 5) The definition of market value is: the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion (IVSC, 2016b). The IVS definition of market value is the basic framework used by this guide, in terms of its definition, ethics and valuation approaches and methods for unregistered lands.
- 6) When valuing unregistered lands, social market values need to be taken into account, as value is a socially constructed phenomenon. They cannot be divorced from the social context in which it occurs. Valuations systems should consider non-market values such as social, cultural, religious, spiritual and environmental values as appropriate. Combining conventional market valuation methods with non-market methods will enable the valuer to arrive at a fairer estimation of the value of land rights.
- 7) Unregistered lands are not on the government land register. Also, in some instances, the land does not match the government land register because the current "owner" is not the owner on the title deed and/or there are serious non-compliant land and/or building uses. This is a less important aspect in this guide.
- 8) Unregistered lands can be found in urban and peri-urban, rural, forest, mining, agricultural and rangeland settings, on state and private land, and in communal and group settings. Many countries do not have information about their unregistered lands, the different tenure types, where the different tenures are located or how extensive they are in the country.
- 9) The continuum of land rights is a concept for understanding and administering the rich complexity of land rights on the ground. Valuers working on unregistered lands can use the continuum of land rights concept to: identify the tenures in the area and the different overlapping rights and claims; understand how their valuation fits into the continuum in that area in terms of potentially moving land from one type of tenure to another; identify the types of value assets (both market and non-market) of the different communities, buyers and sellers; choose the most appropriate valuation methods; better understand and analyse data from the market; determine if IVS valuation standards, international standards on human rights, or human rights abuses have been met or could emerge through any transaction.

PART 2: MAIN MESSAGES: VALUATION OF UNREGISTERED LANDS AND THE GLOBAL AGENDA

- 1) The valuation of unregistered lands are on the critical path to achieving the SDGs goals on food security, land degradation, women's land rights, poverty, urban and rural development, housing and displacement. This guide is intended to contribute to the achievement of the SDGs by identifying policies, principles and some of the remedies that are fit-for-purpose for policy makers and practitioners to engage in land valuations. However, it is only one aspect of achieving the goals.
- 2) Valuation of unregistered lands are often linked to compulsory purchase, which has been linked to human rights abuses. This guide provides key take away messages from the relevant international standards on human rights based on a review of the Universal Declaration of Human Rights, the SDGs, the New Urban Agenda, the VGGT and its



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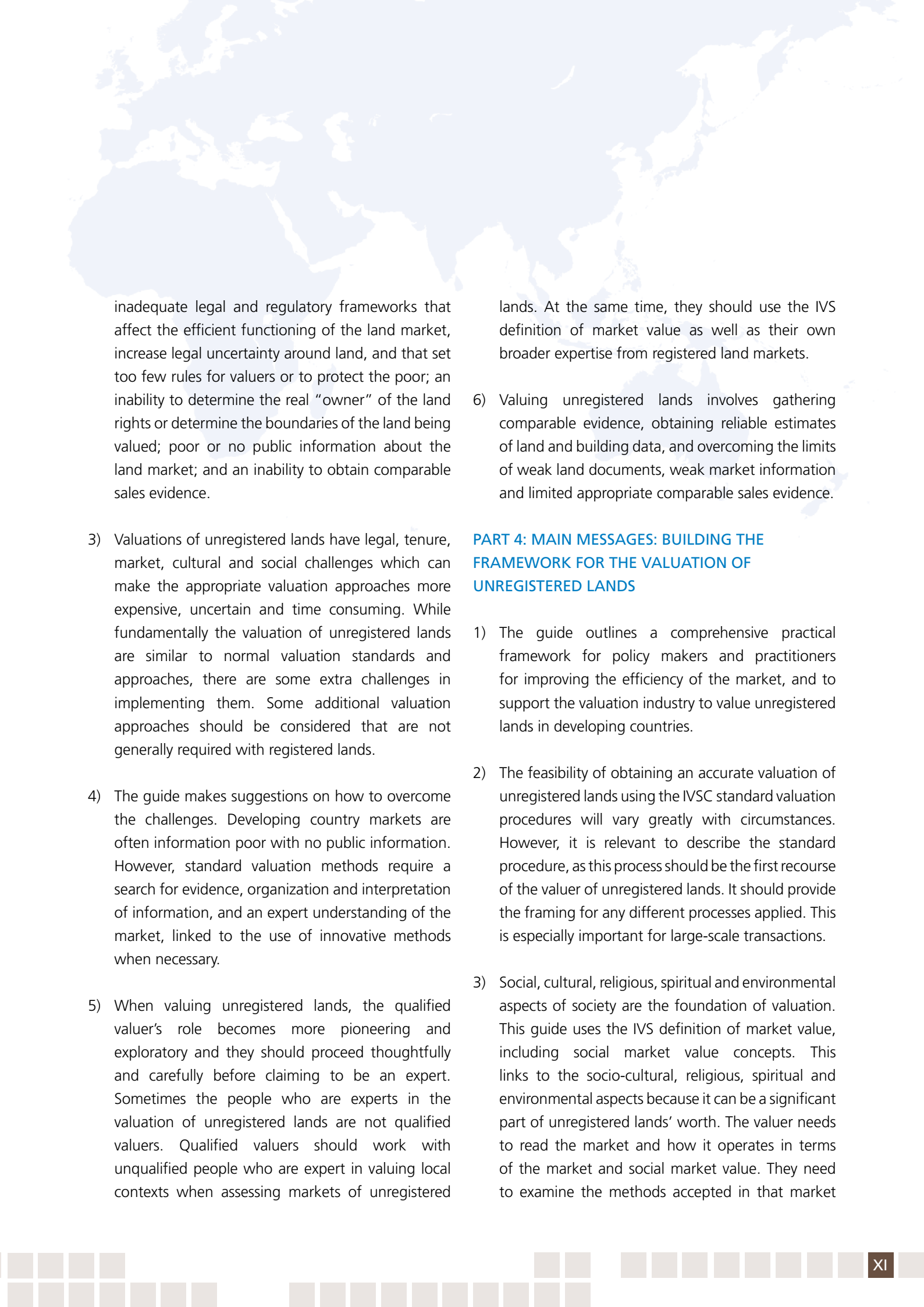
technical guide on valuation, the African Union, UNECA and African Development Bank Land Policy Initiative, CHR's General Comments, international financial institution safeguards and the International Valuation Standards.

- 3) The human rights international standards on the ethics and methods of how unregistered lands should be valued serve as an important frame for valuing unregistered lands in the developing world. IVS-compliant valuations are considered to be vital to correcting the human rights abuses sometimes associated with land acquisition, fair payment and involuntary resettlement and compensation, particularly where they affect the poor. These valuations should include economic, socio-cultural and environmental factors.
- 4) There is general acknowledgement that for global, regional and national development and poverty alleviation some compulsory land acquisition, fair payment and involuntary resettlement and compensation will need to take place. This should be kept to a minimum and not involve forced evictions and unfair payment and compensation for resettlement among other things. IVS-compliant valuations, which take socio-cultural aspects into account, need to be part of this; and valuers need to be aware of these human rights frameworks. It should also form part of their valuation ethics, research, methods, their identification of value for fair payment, the development of the compensation package and their valuation reports to the client. It should also serve to protect the valuer's reputation by showing due diligence about these issues. As part of their ethical due diligence, valuers should be aware of the potential link between human rights abuses and unfair large-scale land-based investment arrangements.

- 5) All the major land-related international human rights standards (except the Universal Declaration of Human Rights) identify unregistered lands as key. Valuers need to be innovative in their tools, methods and remedies to serve society and this market. This includes undertaking cost benefit analyses to support public sector value capture of land readjustment developments to finance the building of sustainable cities, natural capital valuation, the valuation of the cost for development projects by IFIs, the creation and dissemination of transparent data to build markets where none exist, and to improve the functioning of inefficient markets.
- 6) Major players in the international valuation industry, such as RICS and FIG, recognize that there is a great need to develop robust valuation methods for unregistered lands and the work has started. There is consensus that it can be done.

PART 3: MAIN MESSAGES: ADDRESSING THE CHALLENGES OF VALUING UNREGISTERED LANDS IN DEVELOPING COUNTRIES

- 1) There are three general types of people responsible for conducting valuations of unregistered lands in the developing world: those with specific qualifications in valuation and practical experience in the market concerned; professionally qualified people from other land-related disciplines; and land agents, also known as brokers or middlemen, working in the market who have become experts through learning by doing. Often, there are too few qualified valuers for registered lands, let alone unregistered lands.
- 2) There are many challenges in valuing unregistered lands as the markets are often wicked and complex. These challenges include: external pressure to give valuations that would not be neutral; poor and



inadequate legal and regulatory frameworks that affect the efficient functioning of the land market, increase legal uncertainty around land, and that set too few rules for valuers or to protect the poor; an inability to determine the real “owner” of the land rights or determine the boundaries of the land being valued; poor or no public information about the land market; and an inability to obtain comparable sales evidence.

- 3) Valuations of unregistered lands have legal, tenure, market, cultural and social challenges which can make the appropriate valuation approaches more expensive, uncertain and time consuming. While fundamentally the valuation of unregistered lands are similar to normal valuation standards and approaches, there are some extra challenges in implementing them. Some additional valuation approaches should be considered that are not generally required with registered lands.
- 4) The guide makes suggestions on how to overcome the challenges. Developing country markets are often information poor with no public information. However, standard valuation methods require a search for evidence, organization and interpretation of information, and an expert understanding of the market, linked to the use of innovative methods when necessary.
- 5) When valuing unregistered lands, the qualified valuer's role becomes more pioneering and exploratory and they should proceed thoughtfully and carefully before claiming to be an expert. Sometimes the people who are experts in the valuation of unregistered lands are not qualified valuers. Qualified valuers should work with unqualified people who are expert in valuing local contexts when assessing markets of unregistered

lands. At the same time, they should use the IVS definition of market value as well as their own broader expertise from registered land markets.

- 6) Valuing unregistered lands involves gathering comparable evidence, obtaining reliable estimates of land and building data, and overcoming the limits of weak land documents, weak market information and limited appropriate comparable sales evidence.

PART 4: MAIN MESSAGES: BUILDING THE FRAMEWORK FOR THE VALUATION OF UNREGISTERED LANDS

- 1) The guide outlines a comprehensive practical framework for policy makers and practitioners for improving the efficiency of the market, and to support the valuation industry to value unregistered lands in developing countries.
- 2) The feasibility of obtaining an accurate valuation of unregistered lands using the IVSC standard valuation procedures will vary greatly with circumstances. However, it is relevant to describe the standard procedure, as this process should be the first recourse of the valuer of unregistered lands. It should provide the framing for any different processes applied. This is especially important for large-scale transactions.
- 3) Social, cultural, religious, spiritual and environmental aspects of society are the foundation of valuation. This guide uses the IVS definition of market value, including social market value concepts. This links to the socio-cultural, religious, spiritual and environmental aspects because it can be a significant part of unregistered lands' worth. The valuer needs to read the market and how it operates in terms of the market and social market value. They need to examine the methods accepted in that market

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compared with valuation norms and decide whether or not the sale is acceptable as evidence of market and social market value.

- 4) Valuers should adapt existing valuation methods to unregistered lands and value it at its highest and best use. Depending on the circumstances, including the scale and complexity of the valuation problem, the application of standard international valuation principles, practices and protocols should be adapted to the local market circumstances, including the social market. The valuer should consider more innovative methods that meet IVS standards, not be misleading and comply with all relevant local laws.
- 5) Value and unregistered lands. Valuers have a vital role in reading non-transparent markets and helping participants in unregistered land markets to anchor their expectations appropriately. In these markets, there is very little public information on individual properties and transactions, and the participants are more likely to involve unregistered brokers.
- 6) Ethical standards. The International Valuation Standards Council (IVSC) has a Code of Ethical Principles for Professional Valuers. It is of special importance for valuing unregistered lands because it is “fundamental to the integrity of the valuation process that those who rely on valuations have confidence that those valuations are provided by valuers who have the appropriate experience, skill and judgment, who act in a professional manner and who exercise their judgment free from any undue influence or bias” (IVSC, 2011).
- 7) Gender equity. Gender inequality should not impact market valuations when following IVS standards. Training might be required to ensure that valuers follow IVS standards and are not acting incorrectly and unethically by perpetuating gender inequality in their valuations and within their markets.
- 8) Affordability and the cost of valuations. The complexity of the valuation and its cost should be related to the value of the land and the purpose of the valuation. This is a core principle in a fit-for-purpose approach: valuation standards fit for one purpose may be deficient or superfluous for another. It is critical for future-proofing valuation capacity and embedding incremental formalization over time. Transparency of data, appropriate valuation costs and methods are key to facilitate the bottom end of the market and its formalization. The affordability of the valuation method relative to the unregistered land rights being valued always needs to be taken into account when it impacts the poor, vulnerable groups and/or women. However, in cases of compulsory acquisition, both in law and in internationally-recognized human rights there is no case on this affordability basis for applying lower valuation standards, as the head of compensation termed “disturbance” should include the cost of a due diligence valuation.
- 9) Valuation methods can be made more affordable by using standardized reporting, new technologies and using basic data that can incrementally improve with the market over time. The very smallest of day-to-day transactions, particularly in poor communities, might be too small to use IVS compliant valuations. They would need to rely on consultations with practitioners and whatever transparent data is available.
- 10) Legal, regulatory and administrative frameworks. Countries should review their legal and regulatory frameworks and administrative structures for



Human settlements near the bridge in Guatemala. Photo © UN-Habitat.

valuation of land and property, including unregistered lands within the continuum of land rights, to ensure that: they cover unregistered lands; they are transparent and fair; they protect the disadvantaged; government interventions are restricted to a justifiable minimum; and government land and property is managed in an accountable, transparent and efficient manner. Consideration should be given to prioritizing the regulation of compulsory purchase in the review, along with the domestication of international and human rights standards.

- 11) Financing and banking systems. The IFIs generally have their own safe guard policies. The World Bank has recently outlined its valuation method for lending for big development projects based on the World Bank's definition of replacement cost.
- 12) Information and internet technology. Developing country markets are often information poor, particularly for unregistered lands. However, they still require the standard valuation frameworks of a search for evidence, organization and interpretation of information and an expert understanding of the market, linked to the use of innovative methods. The client should be fully informed in writing about any difficulties, and how the valuation was performed in light of these difficulties.
- 13) Local experience and practice. Valuers should use local experience and practice when valuing

unregistered lands. This can involve the use of para-valuers, partnering between international and local valuers, with full disclosure to clients about knowledge gaps.

- 14) Capacity development. A range of capacity development measures should be prioritized for the valuation of unregistered lands. This includes increasing the number of valuers, training valuers beyond just the technical aspects to include the social markets aspects, the development of fit-for-purpose approaches and institutional strengthening for government and the valuation industry.

PART 5: MAIN MESSAGES: IMPLEMENTING THE VALUATION OF UNREGISTERED LAND FRAMEWORK

- 1) All aspects of the valuation of unregistered lands need to be considered within the framework of the national laws and regulations of each country, and each country is different.
- 2) Established methods of valuing registered land can be used to value unregistered lands by using a range of approaches and methods such as: the Direct Comparison Method, the Capitalization of Rental Values tool, the Hypothetical Development Approach, the Summation Method, the Residual Approach, the Depreciated Replacement Cost Approach, and mass valuation.

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- 3) The global needs for compulsory acquisitions are increasing and valuation is a key element of this. Unregistered lands are often acquired through compulsory purchase and valuation in this case is an established method, but it needs to be further adapted for unregistered lands to take into account: national laws and practice, international human rights standards, and safeguards where IFIs are involved. It should also include both the market and the social market and should clearly distinguish between the market value and compensation for disturbance. Other elements associated with compulsory purchase that could be of importance in unregistered lands, particularly in customary and indigenous areas, are “special value to owner” and solatium.
- 4) Valuation of the land and compensation are different. As compulsory purchase often involves unregistered lands, valuers should be able to value the market and social market value of the unregistered lands and estimate the compensation package to the sellers.
- 5) Fit-for-purpose means that there should be a focus on purpose before designing the means to be the most “fit” for achieving it; the approach requires flexibility in designing the means to meet the current constraints and it emphasizes the perspective of incremental improvement to provide continuity.
- 6) A few key alternative valuation methods and concepts are: speaking valuations, visible boundaries and the use of value-based financial instruments with land readjustment. These point to new ways of doing business, including more participatory methods for stakeholders and using value-based approaches to replace compulsory purchase with alternative approaches.
- 7) A speaking valuation is a useful communication tool for unregistered lands. It gives the reader the evidence and the interpretation on which the valuation was premised. Valuers should use it in a way that fits the purpose of their market. Speaking valuations are the most critically informative general reports that valuers can use for unregistered lands because they can also protect the client and the valuer against fraud, negligence and false accusations. They are designed to carefully and fully describe what the valuer did, why they did it, and how they performed their analysis.
- 8) A number of lessons can be drawn from the Namati customary case study of valuing unregistered lands. a.) Capacity development of customary parties is likely to be essential if they are to meet the standards required of willing sellers under the IVS market value definition. b.) There are a wide range of value assets to be considered including social market assets. c.) Valuation can be done of unregistered customary land but it may need additional new valuation methods. d.) Special attention is also needed to maintain IVS market value definition requirements for the social market. International human rights standards should form part of the ethical framework of the valuer given the potential for human rights abuses.
- 9) This is a guide and not a manual. One example of the valuation of unregistered lands are described, that of customary/communal land, to illustrate how the frameworks in the guide can be applied to unregistered lands. This should give guidance for the future development of manuals for valuing the range of different types of unregistered lands identified in the guide.



PART 6. WAY FORWARD

The valuation of unregistered lands is one step along the path to delivering many of the Sustainable Development Goals. Currently, there is consensus within the international valuation industry that the valuation of unregistered lands can be done and should be based on international valuation standards. Valuation of unregistered lands are increasingly seen as vital to the support of the global agenda on achieving food security and climate change, building sustainable cities, enhancing tenure security for both men and women and managing conflict. This guide is a first step towards valuing unregistered lands and should be followed by the development of valuation manuals as well as the domestication of principles and policies from the guide into legislation and regulations.

Valuation that goes beyond the usual definition of market value and includes social market value is an emerging concept, as shown in RICS (2017) and FAO (2017) work on social market value. More thought is required on the social, cultural, religious, spiritual and environmental values when valuing unregistered lands in general and determining solatium in particular, the latter requiring training beyond the scope of most valuation courses, combined with local knowledge. As it is argued that combining conventional market valuation methods with non-market methods will give a fairer estimate of value, such competences must be developed. IVS-compliant valuations should be used for compulsory acquisitions and these should consider human rights frameworks and ethics. This should also serve to protect the valuer's reputation by showing due diligence and will correct abuses that may occur during land acquisitions and other valuations in general.

Unregistered lands include lands belonging to many poor people. This guide argues that the complexity of

the valuation and its cost should be related to the value of the land and the purpose of the valuation; that this needs to be a core fit-for-purpose principle for future-proofing the industry. Some fit-for-purpose ideas are put forward that may help to decrease the cost of valuation, such as standard format reports and the use of new technology. Part of this work should include improving the publically available land data needed for valuation using the land administration system.

This guide is intended to support developing countries to identify the key principles and practices needed to incrementally build their valuation policies, industries and systems. They should build on their existing experience and introduce valuation policy, improve and monitor standards, and over time create an appropriate regulatory framework and national group of valuers with experience in this area.

The guide serves to strengthen the implementation of the continuum of land rights, a key tool to strengthening security of tenure for all. Governments, policy makers, the valuation industry, practitioners, capacity development institutions and other interested parties should use this guide to help achieve the SDG goals of conflict prevention, food security, gender equity and sustainable urban and rural development.

OUTLINE OF THE GUIDE

The guide is divided into six parts: 1) introduction: why the focus on unregistered lands; 2) valuation of unregistered lands and the global agenda; 3) addressing the challenges of valuing unregistered lands in developing countries; 4) building the framework for valuing unregistered lands; 5) implementing the valuation of unregistered land framework; and 6) the way forward.



INTRODUCTION

WHY THE FOCUS ON THE VALUATION OF UNREGISTERED LANDS

Unregistered land rights may account for over 70 per cent of the land rights in a developing country (UN-Habitat/GLTN and IIRR, 2012). Often, there are either no or non-standard valuations in these areas. This holds back economic growth and can lead to hardship for the poor. GLTN, working with the international valuation industry, has initiated the development of guidance on this issue for policy makers, practitioners and other stakeholders. It is based on existing valuation methods.

This section of the guide has three parts. The first is about the role of GLTN partners, the guide's purpose and who it is for. The second section covers definitions of a valuer, what valuation is for, and who needs valuation of unregistered lands. The last section describes why the continuum of land rights is important for valuers and the land market, and the approach for its use.

1.1 VISION AND ROLE OF GLTN

This guide is one of a series provided by the Global Land Tool Network (GLTN), as facilitated by UN-Habitat, on a range of fit-for-purpose, land-related tools that are pro-poor and gender responsive.

It developed from the international recognition for the Global Land Tool Networks' (GLTN) continuum of land rights that describes a range of land rights (e.g. formal, informal, customary), in which registered land is just one of many land rights.

In formal transactions, the rights are articulated in writing and registered with a trusted authority, it is those socially recognized rights that are traded, not the land as such. In informal transactions, the rights may still be socially recognized, and even when they are not there may still be markets in them. This focus in turn needs accepted valuation approaches that conform to professional

standards and consider communities' societal, economic and community values for the range of unregistered land rights. Valuation is one of the 18 GLTN land tools being developed for use at country level.

The GLTN is facilitated by UN-Habitat and is an alliance of global, regional and national partners contributing to poverty alleviation through land reform, improved land management and security of tenure, particularly through the development and dissemination of land tools. GLTN partners include land professionals, urban and rural civil society, research and training institutions, multi-lateral and bilateral organizations. When the GLTN was established by partners in 2006, the lack of valuation of unregistered lands was recognized as a being gap to be addressed.

The authors of this guide were specifically commissioned to write it in conjunction with FIG Commission 9. As this is a guide and not a manual only a few valuation methods have been identified for illustration.

1.2 PURPOSE: WHY WE NEED THIS GUIDE

The purpose of this guide is to support developing countries with unregistered lands to be able to develop policies for the valuation of these lands. Valuation has generally focused only on registered lands. It does not cover the unregistered lands that are often the majority of land rights in a country. There is a dire need for governments and individuals to be able to value these lands.

The need to be able to value unregistered lands is intensifying. Population growth and urban growth rates are increasing the pressure on land and the risk of evictions. More urban and rural development projects are being initiated that need land acquisition, fair resettlement and



Nurek Dam and hydroelectric station in Tajikistan. Photo © United Nations/ Rick Bajornas.

compensation. Linked to the globalization of the land and property markets, large-scale, land-based investments for food and bio-fuels are on the rise and have an impact on rural communities, many of whom are poor. As a result of conflict, there is now the largest number of displaced people ever recorded globally since the United Nations High Commissioner for Refugees was created in 1950; all of these people need land for shelter and/or livelihoods.

The land of the poor, who are a key focus of the SDGs, generally forms part of the 70 per cent of unregistered land rights and claims in developing countries. Frequently, poor people are not able to readily determine if compensation is reasonable for compulsory acquisition and resettlement. Without a clear approach for

valuing their land and establishing compensation, poor occupants may not obtain the market value for their land and this would entrench them even further in poverty.

This guide is intended to improve equity for development projects that involve displacement, fair payment and compensation, such as, for example, with regard to infrastructure and large-scale land-based investments. Its recommendations are in the interest of all parties as they facilitate more just outcomes.

It is intended to assist in the achievement of professional-level valuations of unregistered lands by highlighting the challenges faced when valuing such land and by suggesting remedies to overcome them.

This is not a manual about how to undertake valuations at country level. It is framed to support the SDGs and it builds on the land-related international human rights standards. It is intended to support the implementation of these standards to achieve fair and accountable methodologies in implementing valuations of unregistered lands. It can also support the domestication of these principles at country level.

It only gives some of the remedies, tools and methods needed and a knowledge gap remains to be filled, on which work has already started. FAO recently published a technical guide on valuation for the VGGT. The Royal Institution of Chartered Surveyors has recently documented existing valuation practices on unregistered lands in a number of countries. More work remains to be done.

1.3 WHO IS THIS GUIDE FOR?

This guide is intended for two main groups: valuation practitioners and other land professionals involved in the valuation of unregistered lands.

Secondly it gives advice on valuation for a range of policy makers and it supports government departments in developing countries involved in valuation and large development projects (e.g. roads, dams, urban infrastructure); land departments and land professionals; estates departments and those dealing with inheritance and local authorities. It should be useful for United Nations agencies dealing with displacement and international finance institutions in administering safeguards. It will help investors, real estate developers, banks and financial institutions with risk management and it will guide those engaged in poverty reduction, INGOs (e.g. dealing with displaced people), NGOs (e.g. dealing with slum upgrading), communities (rural and

urban) and women's groups involved in inheritance issues and many more. It should also be useful for universities as part of their curriculum to train future valuers.

1.4 WHAT IS A VALUER, WHAT IS A VALUATION FOR AND WHO NEEDS VALUATIONS OF UNREGISTERED LANDS?

1.4.1 WHAT IS A VALUER?

A valuer's job is to read markets in land. All people claiming to be valuers should meet the definition of expert in that particular market. If a valuer is not sure whether they meet the standards, they should either work to gain the expertise or find an expert in that market who can be a co-signatory to the valuation report. No one should undertake a valuation who does not possess expertise in the market they are valuing or who has not explicitly described how they will overcome any expertise deficiency, as valuers can be legally liable for losses.

1.4.2 WHAT IS A VALUATION FOR?

"Valuation is [a]n integral part of the decision-making function of real-estate investors, mortgage lenders, public bodies and many other individuals and institutions. No one employs (a valuer) unless he has a problem to solve, a decision to make, or a transaction to complete. The value estimate which the valuer produces is used by his client in making his decision..." (Ratcliff, 1965).

1.4.3 WHO NEEDS VALUATIONS OF UNREGISTERED LANDS?

Valuations are needed by many different people: normal participants in day-to-day land sale transactions; vulnerable women and children when the 'owner' dies;

workers and the poor need representation in rent tribunals; disputes between 'owners' and neighbours need a valuation to quantify financial outcomes for peace agreements; compulsory land acquisition for public purposes can negatively impact poor land 'owners' and occupiers, and positive outcomes for all parties involve ethical valuation methods (Nzioki, Swazuri, Tracey-White and Yahya (2013). Also, during compulsory land acquisition, governments need to know the value of the land to make fair compensation. Some government rating agencies need to know the value for land taxation purposes, including when land is being sold. A large-scale, land-based investor buying land for growing food or biofuels needs a valuation of the customary land and use rights held by the occupants of the land to make fair payment.

1.5 MARKET VALUE AND WHY IT IS IMPORTANT FOR VALUATION OF UNREGISTERED LANDS

What is market value? The current IVSC definition of market value is: "The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion" (IVSC, 2017) (see Box 1: below). With regard to unregistered lands, there are additional aspects (RICS, 2017) and valuation should include the full range of values to include the value of unregistered lands within the relevant social arrangements called a 'market'.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) (FAO, 2012) also addresses this issue. It states that valuations should strive to ensure that valuation systems take

into account non-market values, such as social, cultural, religious, spiritual and environmental values (VGGT 18.2). The recently published FAO technical guide (2017) on valuation clarifies this further. When describing non-market values, it states that there are socio-cultural values that people will trade, but there are some values that people will not trade, particularly aspects linked to identity. It goes on to state that "the objective is to combine conventional market valuation methods with non-market methods in order to arrive at a fairer estimation of the value of tenure rights".

Unregistered lands do not need specific valuation approaches. Rather, the IVS definition is the framework used by this guide, in terms of its definition, ethics and valuation approaches and methods. However, current thinking is that valuers need to consider the social market value as well (Hutter and Throsby, 2011; RICS, 2017; FAO, 2012; 2017). In summary:

- *Value is a socially constructed phenomenon and cannot be divorced from the social context in which it occurs.*
- *Valuation should go beyond the usual interpretation of a market value to include social market values.*
- *Valuations systems should consider non-market values such as social, cultural, religious, spiritual and environmental values (see section 4.2 below).*
- *Combining conventional market valuation methods with non-market methods will enable the valuer to arrive a fairer estimation of the value of land rights. Social market value plays a very big part in unregistered lands.*

BOX 1. THE IVS DEFINITION OF MARKET VALUE FOR THE VALUATION OF UNREGISTERED LANDS**Market value is the estimated amount**

Amount of what? Money, goods, services? Money? If so, what kind of money, and how? Lump sum, annuity, etc.? Goods? The exchange can be by barter between willing parties, one selling oranges and the other apples. What happens in this market environment? Services? In many societies, land is supplied on the basis of services being supplied. The valuer should ask, to whom, by whom and for what?

For which an asset or liability would exchange

What assets would exchange? In the context, are they likely to be abstract assets, concrete assets, or a combination? What means of exchange are available in the market and how are their rules trusted there, and enforced if need be? The valuer should always check the relevant laws and institutions that apply in that market and social market.

On the valuation date

Every valuation should be at a past or present date.

Between a willing buyer and a willing seller

What would make the imagined buyers and sellers willing? Did social, cultural, religious, spiritual and environmental values play a role? Did they influence the arm's length? What are they after in buying or selling? Prestige? Subsistence? It is not enough to just assume that they are willing, because their motives should fit the knowledge, prudence and freedom requirements.

Not only willing but also being able is implicit here, because the parties must be able to provide the estimated amount to the other party for the deal to go through. Market/social-market exchanges require motives, means and opportunity before knowledgeable, prudent and free buyers and sellers can exchange an asset.

BOX 1. ... continued

There are often two separate markets for the same piece of land – an internal and external market. Some transactions will be done on the internal market to other community members. Some transactions are done in the external market to developers, people moving into the community. There may be two levels of market prices and therefore market value. The valuation should be clear on which of these ‘separate’ markets is being valued.

In an arm’s length transaction

This means that the parties are to be considered as being independent of one another; not connected in a manner that would influence the estimated amount of a transaction between them and would not influence the market in general.

After proper marketing

What would be the proper marketing (time) for the asset to attain its market value? Market value exchanges happen when both parties are aware of the highest and best use of the asset. What would it take for there to be a sufficiently large body of highest and best potential users aware of the land for this condition to be satisfied? Whatever that is for that particular market and social market, it is to be imagined by the valuer as having been achieved before the date of the valuation.

Wherein the parties had each acted knowledgeably, prudently and without compulsion

Do both parties know where the other party is coming from – what fact perceptions and value judgments are being brought to the potential exchange from both sides? And who are the real parties involved? Does the party representing the ‘owner/s’ really have that authority for all the affected parties concerning the land in question? How is that to be assured? Market value exchanges only happen when one party has not been taken advantage of by the other. The answers to these and other relevant questions in unregistered land markets will guide the valuer as to how that market, including the social market, works.

1.6 WHAT ARE UNREGISTERED LANDS?

Unregistered lands are generally land rights which have not been formally recorded in the government land registration system at all. However, there are other situations, which are described below. Creating registered land rights usually involves the legal processes of the alienation of state land, the adjudication of the land with regard to any occupants and their interests, and the creation of a title deed registered in the land registry. These processes mean that the legal evidence in the form of information is considered certain, increasing predictability and reducing risk. Valuers use the registered land title deeds for their valuation research and as part of their ethical framework.

For the purposes of this guide, unregistered lands are first and foremost not on the government land register. Also, in some instances, the land does not match the government land register because the current 'owner' is not the owner on the title deed and/or there is serious non-compliant land and/or building use. This is a less important aspect in this guide.

With regard to the first type, generally unregistered lands have not been alienated from the state, adjudicated and a registered title deed created, with or without a cadastral survey. With regard to the second, where the de facto situation on the ground does not match the registered land rights this is also termed 'unregistered lands' for the purposes of this guide. The size of the issue, its impact on the market, the legal uncertainties and the difficulty in obtaining information is problematic for valuation. This situation usually relates to incomplete technical processes in transactions or where there are significant non-compliant land uses and buildings.

There is a wide range of unregistered land types and rights (see Table 1. on the right). These include land with legal but unregistered land rights; land with non-legal but legitimate land rights; land with legal but illegitimate land rights, and land with illegal and illegitimate land claims. It is possible to find these in both formal and informal land markets. This guide does not equate markets in unregistered lands with informal land markets.

In most developing countries, up to 70 per cent of the land rights are unregistered (UN-Habitat/GLTN and IIRR, 2012).

Land registration has not been completed for a range of reasons, including weak institutions, inappropriate laws and regulations, high costs, complexity, lack of capacity and inadequate maintenance of the land administration system. It could take hundreds of years to achieve comprehensive coverage (FIG, 2014). Many countries do not have information about their unregistered lands, the different tenure types (see Table 1. below), where the different tenures are located or how extensive they are in the country.

1.7 COMMON TYPES OF UNREGISTERED LANDS THAT NEED VALUING

This guide only gives a generic overview of the most common rights in unregistered lands in developing countries. There are many types of unregistered lands that need valuing and have both rights and claims over them (see Table 1 on page 9), often overlapping. A full understanding of the specific rights (and claims) associated with unregistered lands can only be gained at the local level using local knowledge.

TABLE 1: COMMON TYPES OF UNREGISTERED LANDS

Legal Land Type	Common range of tenure statuses
1. Rural state/public land – registered and unregistered. Sometimes natural resources are protected through conservation frameworks.	Occupied by citizens using it as a group and as individuals with complex secondary rights. Undocumented customary/indigenous tenures including rangelands for pastoralists. Natural resources used by communities for livelihoods, transit, fuel within or outside of legal framework. Illegal use or illegal occupation. Theft of state land. Incomplete land registration documents. Undocumented.
2. Urban and peri-urban state/public/customary land – registered or unregistered	Unplanned/illegally subdivided land/informal settlements. Incomplete land registration documents. Deceased estates.
3. Customary/indigenous owned land	Individual, community, communal and group rights. Natural resources used by communities for livelihoods, transit, fuel within or outside of legal framework. Rangelands for pastoralists. Under conversion to cash crops by community, informal urban extensions, deforestation, informal community facilities.
4. Urban registered private land owned by individual	Illegally subdivided for informal settlement, change of use of buildings from residential to commercial, derelict/abandoned properties, incomplete off-plan developments in prime areas, use of buildings on abandoned land. Incomplete land registration documents. Deceased estates.
5. Rural registered private land - individual	Illegal change of land use. Illegally deforested. Rangelands for pastoralists. Incomplete land registration documents. Deceased estates.
6. Urban registered and/or unregistered private land- communal	Illegally subdivided for informal settlement, family lands, use does not match legal use rights, use of building on abandoned land. Incomplete land registration documents. Deceased estates.
7. Rural registered private land-communal/group	Illegal change of land use. Illegally deforested. Rangelands for pastoralists.
8. Public or private land where the paperwork for registration has not been completed or subsequent transactions are not registered	Peri-urban areas converting from rural or customary/indigenous tenures. Off plan apartment developments. Theft of state land. One or more informal conditions such as not planning or building or land tenure compliant with the law. Rights in the register out of date because of informal land use, unregistered inheritance, sales or donation.
9. Unregistered easements, corridors, buffer zones, shore lands	Municipality/state easements informally occupied. Customary or community rights of way in urban and rural areas on public and private land. Rangelands for pastoralists.

Drawing from Table 1, there are a range of reasons why valuation is needed. Valuation of rural state/public land for public sector purposes will be needed in the following situations: before land acquisition for public sector budgeting, land consolidation, compulsory land acquisition for development projects or conservation, road developments and formal urban extensions and

slum upgrading. It will also be needed for relocation, compensation, community facilities, refugee camps and cultural heritage projects. Many of the same type of valuations will also be needed for customary/indigenous owned land, as well as privately owned registered land held by individuals or groups where there have been illegal land-use changes.

Valuation of rural state/public land for private purposes will be needed in the following situations: before land acquisition for natural resource extraction, including mining, large-scale, land-based investments (LSLBI), conversion to cash crops by a community, credit, to settle disputes where financial outcomes are one part of the agreement, inheritance, eviction, sale, lease. Many of the same types of valuations for private purposes will be also be needed for customary/indigenous owned land and for registered land that is privately owned by individuals or groups where there have been illegal land-use changes.

Valuation of urban and peri-urban state/public/customary land – registered or unregistered – for public sector purposes will be needed in the following situations: before slum upgrading, land readjustment, land pooling, before land acquisition for public sector budgeting and for compulsory land acquisition for urban development, including infrastructure, city centres, urban extensions, compensation, relocation and refugee camps, resettlement of people after disaster and conflict, eviction and rent tribunals.

Valuation of urban and peri-urban state/public/customary land – registered or unregistered – for private purposes will be needed in the following situations: to settle disputes where financial outcomes are one part of the agreement, for inheritance, for credit, sale and leases. Many of the same type of valuation will also be needed for private purposes for urban registered or unregistered private land owned by individuals or communally.

Also, valuation for public sector purposes will be needed of public or private land where the paperwork for registration has not been completed or subsequent transactions are not registered. This will also be needed for peri-urban housing developments and city extensions,

upgrading the centre of cities and/or tourism areas, compulsory land acquisition for development projects, road developments, slum upgrading, eviction, relocation and compensation. Valuation for private sector purposes will be needed for small holder farmers and credit, buyers and sellers of land and buildings, commercial buyers of old housing in inner cities, LSLBI, to settle disputes where financial outcomes are one part of the agreement, inheritance, eviction and rent tribunals.

In addition, valuation for the public sector will be needed for unregistered easements, corridors, buffer zones and shore lands for public sector purposes, including the registration of easements, compulsory land acquisition for development, including urban development and compensation. Valuation for private sector purposes will be needed for LSLBI and to settle disputes where financial outcomes are one part of the agreement.

Different valuation methods will be needed for different types and specific valuation methods may have to be developed for each type. Identifying valuation methods for all the types of tenures in Table 1 is beyond the scope of this guide. However, section 5.1 describes a few of the common valuation approaches and methods that can be used in particular contexts, such as customary land.

1.8 VALUATION AND THE CONTINUUM OF LAND RIGHTS

The continuum of land rights is a key framework for valuers to understand unregistered lands as an aid to their valuation analysis. If the continuum of rights and the different forms of tenure were more recognized, this would reduce transaction costs in the market, clarify expropriation and help valuers. It would also be an aid to transparency and help protect the rights of the weakest.

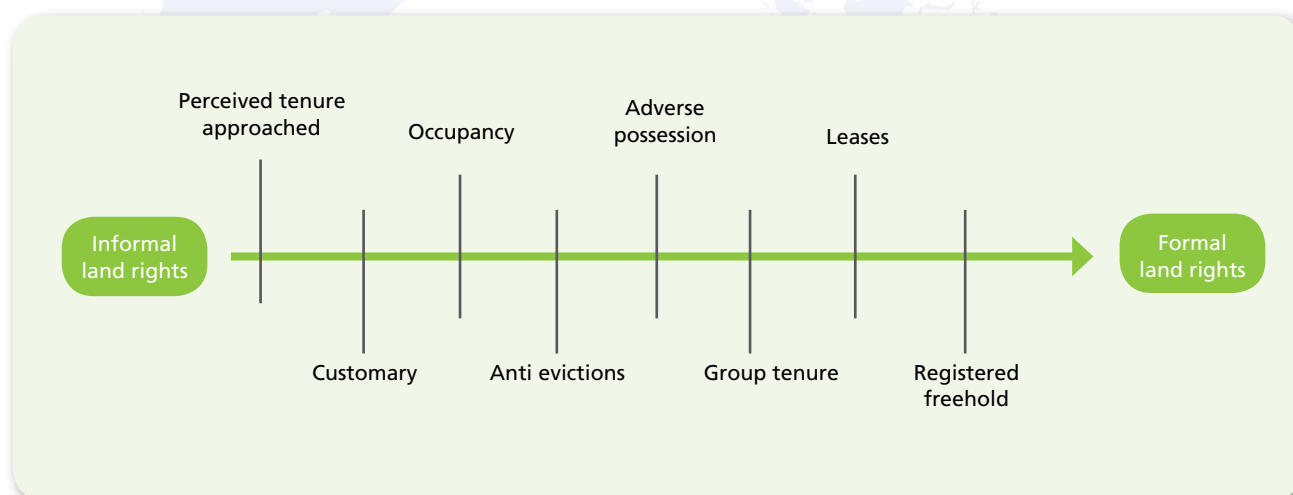


Figure1: The continuum of land rights (UN-Habitat/GLTN: 2015).

Valuers should understand the impact of their valuations in these environments and how valuation can be an innovative tool that contributes to greater security of tenure. For many years policy makers and practitioners focused on registered land rights as the only and best option for security of tenure. GLTN partners successfully promoted the continuum of land rights (see diagram below) as a powerful alternative concept and approach.

Land tenure is frequently understood in binary terms: formal/informal, legal/extra-legal, secure/insecure, de facto/de jure. In practice, a broad and complex spectrum of appropriate, legitimate tenure arrangements exists between these polarities.

The continuum of land rights is a concept for understanding and administering the rich complexity of land rights on the ground. The rights along the continuum may be documented or undocumented, formal or informal, for individuals or groups, including pastoralists,

and residents of slums and other settlements, which may be legal or non-legal. The rights do not lie along a single line and they may overlap. Registered freehold is not seen as the preferred or ultimate form of tenure, but as one of a number of appropriate and legitimate forms (customary, leasehold, group tenure, others). The most appropriate form/s depends on the context. Tenure types that best suit the social, cultural and economic needs of local communities and the needs of responsible land administration authorities at a particular time are advocated. The continuum provides for the recognition and increase of security across the spectrum, with the opportunity for movement between numerous tenure forms. This offers land actors and governments an innovative approach for the realization of tenure security, through recognizing, recording and administering a variety of appropriate and legitimate land tenure forms. Valuers working with unregistered lands need to be aware of these complexities and develop appropriate research techniques and valuation methods.

Valuers can use the continuum of land rights to better understand the complexities associated with unregistered lands. It illustrates how land rights are not always fixed, legal concepts applied to unique sites/plots of land. Instead, land tenure relationships are social, complex and overlapping. They can and do change over time, especially in situations such as big development projects, the development of cash crops and urban densification and extensions. Valuers working on unregistered lands can use the continuum of land rights concept to:

- *Identify the tenures in the area and the different overlapping rights and claims.*
- *Understand how their valuation fits into the continuum in that area in terms of potentially moving land from one type of tenure to another.*
- *Identify the types of value assets (both market and non-market) of the different communities, buyers and sellers.*
- *Choose the most appropriate valuation methods; Understand and analyse data from the market.*
- *Make a judgment on whether the IVS valuation standards have been met.*
- *Assess whether international standards on human rights have been followed, or whether human rights abuses could emerge through any transaction. Refer the matter to an appropriate party if the valuer is not qualified to make an impact assessment.*

1.9 THE METHODOLOGY, WHAT WE KNOW AND KNOWLEDGE GAPS

There is extensive work available on the valuation of registered lands. While this guide only focuses on the valuation of unregistered lands in the developing

world, it draws on this work as markets, and examples of market transactions fitting the definition of market value, can also be found in relation to unregistered lands. There is also extensive literature on the principles of valuation for payment to people whose land and property rights have been taken from them, with the most valuable component of that payment usually being the market value of the land and its improvements. There are many valuation manuals, tools and courses, but they focus on registered lands and tend to assume precise surveys and rule of law. These include the International Valuation Standards Council (IVSC) standards, glossary, code of ethics, and FIG's Compulsory Purchase and Compensation: Recommendations for good practice (Viitanen, Falkenbach & Nuuja, 2010). This guide largely extrapolates from this work and applies it to the valuation of unregistered lands. It also draws on the small number of publications on the valuation of unregistered lands.

While there is a rich literature on developing countries' land issues and challenges and human rights standards, generally this has not been sufficiently linked to the issues associated with valuation of unregistered lands. One exception is Towards a Protocol on Fair Compensation in Cases of Legitimate Land Tenure Changes (True Price and University of Groningen, 2016). This work was a response to the many cases of large-scale acquisitions of land for food or bio-fuels in the developing world by companies in which fair payment and compensation for resettlement was not always being paid to the land's occupants (see below). Generally, the findings of these types of frontier studies that address how to value unregistered land have not yet become part of national policies.

This guide is intended to fill some of these knowledge gaps. It is intended to support national governments to develop policies for the valuation of unregistered lands; and valuers in those countries to undertake valuations. It will outline valuation principles and policies and a few valuation approaches and methods. It provides guiding principles for the valuation of unregistered lands, and builds on land-related international human rights standards.



VALUATION OF UNREGISTERED LANDS AND THE GLOBAL AGENDA

2.1 VALUATION AND GLOBAL ISSUES

This part describes the key international human rights and valuation standards that should be applied to the valuation of unregistered lands. It includes general global instruments such as the SDGs and New Urban Agenda, as well as specific land-related instruments, including the VGGT and the International Valuation Standards.

Valuation is a small but critical part of addressing many of the global challenges and goals set by the international world. The Sustainable Development Goals (SDGs) for 2030 (United Nations, 2015) address food security, land degradation, women's land rights, poverty, urban and rural development, housing and displacement, among other things. Professional standard valuations are critical to achieve these goals. This guide will help to identify policies and principles and some of the remedies that are fit-for-purpose for policy makers and practitioners to engage in land valuation as part of achieving the SDG goals.

For the first time in human history, more than half the world's population lives in cities and "the world can expect to add close to 1.5 billion urbanites in the next 15 years, and 3 billion by 2050" (UNFPA, 2016). The New Urban Agenda (NUA) led by UN-Habitat is intended to address this. Early estimates of the cost of its implementation run into tens of trillions of dollars and will require many land valuation-related strategies for unregistered lands.

Large-scale land-based investments (LSLBIs) that, in some situations, may be land grabbing, have gathered momentum in recent years. The process is characterized by a widespread leasing/concessions or sale of public

lands or community lands to large, foreign companies and governments. Countries leading the process are often driven by the imperative of producing food overseas for their own growing populations. The target of land acquisitions (i.e. the supply side of the equation) has been Africa - especially sub-Saharan Africa - Latin America, Central Asia and South-East Asia. It is estimated that 15-20 million hectares of farmland in developing countries were under negotiation between 2006 and 2009. An even higher scale is advanced by the World Bank study of 2010, estimating that some 45 million hectares were under negotiation in 2009 alone, with 70 per cent of this located in Africa (Hall, 2011).

Frequently, the demand for land and property for development projects involves poor communities that can suddenly find themselves and their land the focus of a compulsory acquisition, resettlement and compensation situation. The entire procedure and the non-transparent values of unregistered lands can disadvantage them. It can also erode the confidence of communities and their potential support for these development initiatives. This delays implementation, payment for the unregistered lands and the ultimate payment of the compensation package (GLTN, 2015).

Alarm has been raised about this, with questions being asked about the implications for food security, the livelihoods of affected communities, and contestations and conflicts associated with the process. These global trends have implications for the valuation of unregistered lands, as a valuation is often necessary to achieving global and national goals and human rights. A market valuation can be an important corrective to abuses and may provide opportunities for transparency and accountability where few or none were available before.

2.2 VALUATION, HUMAN RIGHTS AND INTERNATIONAL INSTRUMENTS

The United Nations and its Member States have set goals and developed human rights and international standards to address current global challenges. This guide is aligned with the human rights principles embodied in these standards that state that unregistered land rights should be treated the same as registered land rights. Countries are encouraged to use this guide to review these international standards and to domesticate these principles in their legal and regulatory frameworks.

The Sustainable Development Goals (SDGs) with its focus on 'leaving no one behind', the Universal Declaration of Human Rights (UDHR), the NUA and VGGT principles are the main human rights frameworks used by this guide as a basis for policy for the valuation of unregistered lands. All of them, except for the UDHR, are also geared to unregistered lands.

These international standards are useful as part of an ethical framework for valuation. Valuations should take into account: ending poverty in all its forms as most poor people have unregistered lands; ensuring equal rights and opportunities and eliminating discrimination, particularly for women; taking into account socio-economic and cultural diversity; addressing adequate housing issues; the peace and stability of societies; and sustainable development and the sustainable use of land and resources.

2.2.1 SUSTAINABLE DEVELOPMENT GOALS (SDGS)

The SDGs are the overarching international normative framework for this guide. They deal with land from a number of angles: Goal 1 on poverty, Target 1.4 refers to the need for ownership and control over land and

natural resources, and there is an SDG land indicator (1.4.2) for governments to report on it. Goal 2 on food security, Target 2.3 refers to the need for secure tenure and access to land. Goal 5 on gender, Target 5a, refers to the need for ownership and control over land. Goal 10 focuses on the reduction of inequalities (inequality in land is common). Goal 11 on urban, Target 11.1 refers to the need for adequate housing and the upgrading of slums (which requires land). Goal 15, Target 15.3 refers to the need to restore degraded land. Goal 16 on peaceful societies, Target 16.3 refers to the need for the rule of law (land as a root cause of conflict can be a key rule of law issue). These SDG goals reflect the challenges that this guide addresses.

2.2.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS, UNITED NATIONS HUMAN RIGHTS COUNCIL GENERAL COMMENTS

Aside from the important Universal Declaration of Human Rights (UDHR) (Art. 1 'right to own property alone as well as in association with others') there are a number of United Nations Human Rights Council (HRC) General Comments that have a direct bearing on valuation issues. Some of the key issues valuers of unregistered lands need to know about from these HRC General Comments are:

- 1) "According to international human rights law, everyone has the right to adequate housing as a component of the right to an adequate standard of living" (A/HRC/4/18).
- 2) "Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law" (A/HRC/4/18).



Eviction in Korail slum in Bangladesh. Photo © UN-Habitat.

- 3) A/HRC/4/18 is a “set of guidance to states on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute ‘forced evictions’. These guidelines aim at providing a practical tool to assist states and agencies in developing policies, legislation, procedures and preventive measures.”

In regard to compensation, a key issue which can be linked to valuation, A/HRC/4/18 gives a wide range of guidance also for unregistered lands:

- 1) “When eviction is unavoidable, and necessary for the promotion of the general welfare, the state must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property...Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better”. “All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings” (A/HRC/4/18).
- 2) To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; ... resettlement and transportation costs (especially in the case of relocation far from the source of

livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income (A/HRC/4/18).

- 3) The HRC A/HRC/171/31, which applies to all business enterprises says that “states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises”.

The valuation of unregistered lands using IVS standards as outlined in this guide is a step in the right direction and will contribute to the implementation of both the UDHR as well as the relevant HRC General Comments. It makes it possible to address some of the abuses that these human rights standards describe.

2.2.3 NEW URBAN AGENDA (NUA)

The NUA is a major recent United Nations Declaration passed by Member States led by UN-Habitat (2016) and it gives direction to this guide in terms of its call for:

- 1) “Increased security of tenure for all, recognizing the plurality of tenure types, and to develop fit-for-purpose and age-, gender- and environment-responsive solutions within the continuum of land and property rights, with particular attention to security of tenure for women as key to their empowerment, including through effective administrative systems”.
- 2) Support “strong, inclusive management frameworks and accountable institutions that deal with land

registration and governance, applying a transparent and sustainable management and use of land property registration, and sound financial system". Support "developing and using basic land inventory information, such as a cadastre, valuation and risk maps, as well as land and housing price records to generate high-quality, timely and reliable disaggregated data by income, sex, age, race, ethnicity, migration status, disability, geographic location and other characteristics relevant in national context, needed to assess changes in land values..."

- 3) "Promote best practices to capture and share the increase in land and property value generated as a result of urban development processes, infrastructure projects and public investments... (and) reinforcing the link among fiscal systems, urban planning, as well as urban management tools, including land market regulations."
- 4) Support "governments to implement transparent and accountable expenditure control instruments for assessing the necessity and impact of local investment and projects... in support of open and fair tendering processes and procurement mechanisms, as well as preventative anti-corruption measures to promote integrity, accountability, effective management and access to public property and land".
- 5) "Promote capacity development programmes on the use of legal land-based revenue and financing tools as well as on real estate market functioning for policymakers and local public officials focusing on the legal and economic foundations of value capture, including quantification, capturing and distribution of value increments."

2.2.4 THE VOLUNTARY GUIDELINES ON THE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY (VGGT)

The VGGT are a major soft law international standard on land tenure with a focus on rural land. This guide aligns with the general principles of the VGGT, which are that states should "recognize and respect all legitimate tenure right holders and their rights; ... whether formally recorded or not" (FAO, 2012). They also state that: "Non-state actors, including business enterprises, have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights... Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved" (FAO, 2012).

With regard to compensation, the VGGT Article 16 (FAO, 2012) states that Member States:

- 1) "Should provide prompt, just compensation where tenure rights are taken for public purposes."
- 2) "Should respect all legitimate tenure right holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation in accordance with national law."
- 3) "Should ensure a fair valuation and prompt compensation in accordance with national law."

Finally, Article 18 of the VGGT (FAO, 2012) provides specific guidance for the valuation of what the VGGT term “legitimate tenures” that include unregistered lands. It states:

- 1) “States should ensure that appropriate systems are used for the fair and timely valuation of tenure rights for specific purposes, such as operation of markets, security for loans, transactions in tenure rights as a result of investments, expropriation and taxation.”
- 2) “Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable.”
- 3) “States should develop policies and laws that encourage and require transparency in valuing tenure rights. Sale prices and other relevant information should be recorded, analysed and made accessible to provide a basis for accurate and reliable assessments of values.”
- 4) “States and other parties should develop and publicize national standards for valuation for governmental, commercial and other purposes. National standards should be consistent with relevant international standards. Training of staff should include methodologies and international standards.”
- 5) “Implementing agencies should make their valuation information and analyses available to the public in accordance with national standards. States should endeavour to prevent corruption in valuation through transparency of information and methodologies, in

public resource administration and compensation, and in company accounts and lending.”

2.2.5 AFRICAN UNION, UNECA AND AFRICAN DEVELOPMENT BANK LAND POLICY INITIATIVE FRAMEWORK AND GUIDELINES

The Framework and Guidelines (2010) on Land Policy is a joint product of the African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB). It is an important international standard because the vast majority of Africa’s land is unregistered, the socio-cultural factor of land is vital and there is a significant amount of LSLBI.

While valuation is not specifically mentioned in this report, issues that will require the valuation of unregistered lands are mentioned. It identifies global trends impacting Africa, including: “the new scramble for Africa’s land resources” by big players from outside of Africa in regard to “timber, tourism, commercial development; ... food production for consumption abroad”.

A technical guide has also been produced by this partnership on LSLBI (AU, AfDB and UNECA, 2014) drawing on all the major international human rights instruments; two of the six fundamental principles identified in this guide are linked to the valuation of unregistered lands. Firstly, LSLBIs should respect the human rights of communities; secondly, the guide states that: “Decisions on the desirability and feasibility of LSLBI (should be) based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the life-time of the investment.”

The LSBLI guide also calls for:

- 1) Proper valuation of land so as to discourage excessive land acquisition in these circumstances.
- 2) Appropriate compensation for land rights' holders which should go beyond land lost and include compensation for "rights and benefits which would have accrued to rights holders by reason of their landholding or customary use, whether individual or customary", which includes secondary rights over land. Here they note that communities often require support to empower them to negotiate these issues on an equal footing with investors.
- 3) Capacity development on managing balanced LSLBI for Member States, local authorities and for communities, in particular women, to be able to better negotiate benefits, compensation and other terms of agreements during LSLBI.

2.2.6 WORLD BANK SAFEGUARDS

The World Bank is updating its safeguards on Bank-financed investment projects; their new policy on this, outlined in The World Bank Environmental and Social Framework (2017), will be fully implemented in 2018. It has a section on "Land Acquisition, Restrictions on Land Use and Involuntary Resettlement", in which one of the objectives is to "mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by ...providing timely compensation for loss of assets at replacement cost". It describes replacement cost and the valuation method that will be used in situations where a land market exists and where it does not. This is quoted in Part 4 of this guide, as it speaks directly to some of the purposes of this guide.

2.2.7 INTERNATIONAL VALUATION STANDARDS 2017

The International Valuations Standards Council (IVSC) has produced International Valuations Standards 2017 with mandatory requirements approved by the IVSC Standards Board and applicable since 1 July 2017. These have relevance to procedures when valuing land whether registered or unregistered, and are used extensively in this guide. These standards should be mandatory for any valuer of unregistered lands.

2.2.8 THE ROYAL INSTITUTION OF CHARTERED SURVEYORS (RICS)

The Royal Institution of Chartered Surveyors' recently commissioned research on unregistered lands, The Valuation of Unregistered Lands: A global perspective, (2017b) discusses the economic case for title registration and whether it is needed to ascertain the value of land.

The principle findings of the study are that (a) local valuers have adapted or shown the potential to adapt established valuation methods to value different types of land/tenure - whether registered or unregistered; (b) the existing methods, however, often substantially undervalue or overvalue unregistered lands; (c) embracing the concept of 'reasonable value' may help to address the problem of undervaluation.

2.2.9 HABITAT INTERNATIONAL COALITION

An international NGO and GLTN partner, Habitat International Coalition and the Housing and Land Rights Network (HIC-HLRN), has developed the Housing Rights Violation Loss Matrix as a central tool and reference for determining the consequences for people, households and communities of forced eviction and displacement.

It can determine the range of losses and costs that are typically associated with forced evictions, but are rarely recognized or documented. It can be used by valuers to calculate some of the non-market aspects

that need valuing, as well as a compensation package for disturbance that aligns better with human rights standards (HLRN, 2016).

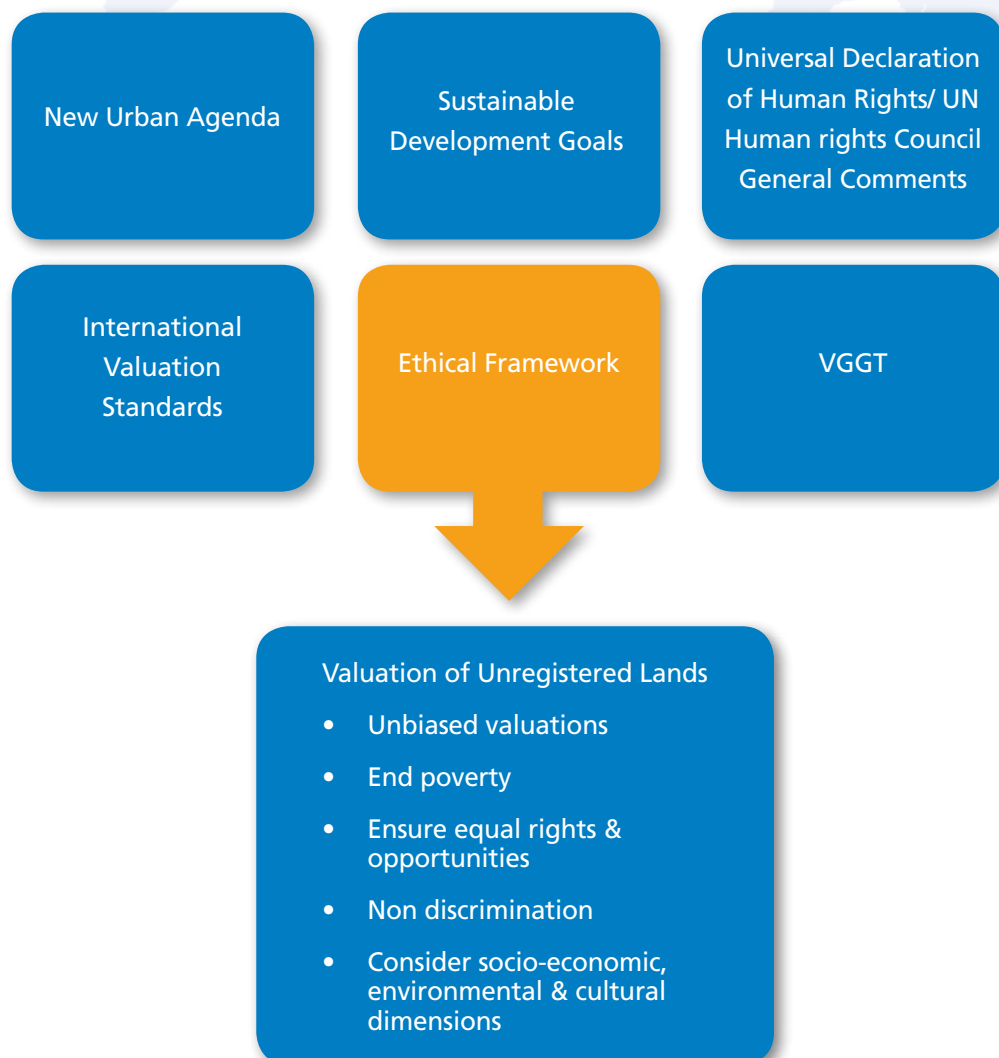


Figure 2: Global frameworks as Ethical Framework for valuation of unregistered lands.

ADDRESSING THE CHALLENGES OF VALUING UNREGISTERED LANDS IN DEVELOPING COUNTRIES

3.1 WHO IS DOING VALUATION OF UNREGISTERED LANDS

There are three general types of people responsible for conducting valuation of unregistered lands. The first, and best qualified, are those with specific qualifications in valuation and enough practical experience in the market concerned.

The second general type is professionally qualified people from other land-related disciplines. They are often well placed to discover the market value and to read the relevant market.

The third general type is land agents, also known as brokers or middlemen, who have become experts through learning by doing. While they may not be professionally qualified as valuers, in practice they are experts because they have a great deal of content knowledge and a deep understanding of the markets.

3.2 INSUFFICIENT TRAINED AND/OR REGULATED VALUERS

Many countries' land and property markets are undeveloped but are the very same countries where a more mature market could help to strengthen their ability to overcome other economic challenges. These countries' growth is limited by the lack of legal, financial, valuation, land brokering and land or property management skills.

This is often linked to the lack of regulation of valuers, brokerage and property management, which allows virtually anyone to provide these services. Some countries have no valuers; in others valuers may have little experience or training, and there may be no continuing professional education. Even experienced valuers may use out of date and inappropriate methods.

This is a classic chicken and egg situation. The skills have not developed because there is no market, but the market's growth is limited due to the lack of qualified valuers (McDermott, 2012).

Qualified valuers should work with unqualified people who are experts in valuing local contexts when assessing markets of unregistered lands. They should, at the same time, use the IVS definition of market value as well as their own broader expertise from registered land markets.

If no unqualified experts can be found, a valuation expert can still undertake extensive research into the unfamiliar market. This would need to identify if the conditions exist which fulfil the IVS market value definition, taking into account the socio-cultural aspects as appropriate. In these markets, the valuer should not assume that actual market participants have similar perceptions and value judgments to that of the valuer.

Finally, out-dated or a lack of any national standards can also have an impact. The adoption of IVS by either government regulators or by local professional associations has not been fast enough. Often, these standards are used even if they are not adopted in statute; sometimes those who have adopted the IVS standards lack the structure to educate valuers on how to meet them and compliance mechanisms are not in place.

3.3 LAND MARKET CHALLENGES

While fundamentally the valuation standards of unregistered land are not different from normal valuation standards and approaches, there are some extra challenges in implementing them. The IVSC identified the following:

- A poor or inadequate legal framework that does not allow for the efficient functioning of the property market.
- The lack of published information or difficulty in obtaining information regarding transactional and other data needed for proper valuation.
- Greater volatility of land and property markets.
- Lack of adequately trained professional valuers.
- Out-dated national valuation standards.
- External pressure.
- Excessive or insufficient government intervention (adapted from IVSC, 2001).

‘Market-related’ challenges are those elements to do with the actual market itself, although some may be heavily influenced by legal and social aspects of the market. This also includes the maturity of the market. Less mature markets in unregistered lands may lack many of the elements required for market efficiency.

Land markets in unregistered lands can experience excessive government interference or insufficient government intervention. Either of these can limit the land market’s efficiency. Government involvement in unregistered lands includes failure to provide a legal / administrative framework conducive to an efficient and transparent land market; weak governance linked to corrupt practices at the level of the institution and/or individuals; below-market lease rates by government that transfers value to the lessees/ tenants; and inadequate monitoring, evaluation and enforcement of policies, laws and administration.

Transparency of government transactions is essential for an efficient land market and is key during leasing or compulsory acquisitions. It is a common challenge in unregistered land markets. There are often rumours about government agencies paying exorbitant prices above the appraised value. Where the government is



Land registration records in Nanyuki Registry, Kenya. Photo © FAOKE /Justus Wambayi.

a substantial buyer – often the only buyer in the case of customary land in some countries - transparency is essential. Additionally, transparent market data, even imperfect data, can foster more efficient markets at the community level by helping to empower small landowners and vulnerable groups to make better day-to-day land-related decisions.

Other market-related challenges are linked to markets that are not mature, are small, volatile, corrupt or risky because of crime or armed conflict. They may also be geographically remote, they may have small populations, and they may be part of the poorest sector of society where local incomes are insufficient to pay for an IVS compliant valuation. Additional challenges are inactive markets or those where valuers make little money.

There is also the challenge of external pressures on valuers from land and property owners, government officials or others with a financial or personal stake based on the value outcome. In the public sector, a government may pressure valuers (either staff or private valuers) when undertaking compulsory purchase of land and buildings to give low values to make it subject to budget allowances, or to save money, rather than subject to legal requirements. Government officials may also pressure valuers to give higher values of land and buildings owned by friends or family, or because of rent seeking from landowners.

3.4 LEGAL AND REGULATORY FRAMEWORK ISSUES

The legal framework is fundamental to the effectiveness of a real estate market. Firstly, it sets out how the land is defined and registered or, in this case, not registered. Secondly, the legal system itself defines how the land rights are created and enforced. This is a key challenge with unregistered lands. Often, the legal framework is unclear about unregistered lands and the land rights

are imprecise, unwritten, with different interpretations between affected parties, and with indecisive dispute-resolution methods.

Some of the challenges include:

- Poor or inadequate legal and regulatory frameworks that affect the efficient functioning of the land market.
 - A legal and regulatory framework that is only applied by government to registered lands, which may require review and re-interpretation to apply to unregistered lands.
 - An inefficient legal structure leading to, for example, long delays in court
 - The introduction of a new legal structure.
 - Non-personal ownership, for example communal ownership, where there is a lack of legal clarity on the land rights of individuals within the group.
 - Lack of faith in the legal system that issues will be resolved in a fair and prompt manner. For example, land claims / disputes may take years to resolve.
- Many policies and legal frameworks exist about payment for registered land acquired for developments. However, for unregistered lands, there are often no legal and regulatory framework already in place. This can lead to costly litigation and project delays on the one hand, and the poor are forced to accept what they are offered on the other. It also makes IVS-compliant valuation adapted for the social market hard, even though it is necessary.

Many countries have plural legal systems. In these situations, even though a legal and regulatory framework is in place, it may be contested when there are conflicts between the statutory land laws and customary law and practice, including religious law. This can lead to non-transparent land markets without public information, lengthy court cases, forum shopping, and frozen land



Informal settlement on the Picacho hill in Medellín Colombia. Photo © UN-Habitat.

and property in deceased estates, all of which impact the land market.

3.5 GATHERING COMPARABLE EVIDENCE

To present him or herself as a professional, the valuer should be familiar with all the evidence that a reasonably well-informed and normally diligent party to an exchange would consider adequate to close the deal under the circumstances. The valuer has to be organized and have methods in place to both gather and compile evidence on the market concerned. There are several potential challenges or barriers:

- Determining the real 'owner' of the land rights to be valued.
- Determining the correct boundaries and size of the land.
- Lack of land documents and information.
- Inability to obtain appropriate comparable sales evidence.
- Determining the appropriate valuation method.

Only the final two are the primary professional responsibility of the valuer, but all impact the valuation assignment (Nzioki et al, 2013).

3.5.1 DETERMINING THE REAL 'OWNER' OF THE LAND RIGHTS TO BE VALUED AND LACK OF DOCUMENTS

Each country's land and property laws and regulatory frameworks state what legal land rights exist and the content of those rights. Some unregistered rights are legal rights, some are not legal but are legitimate, and some are illegal. Valuers need to be familiar with these in the jurisdictions where they work.

In some registered lands, the de jure and de facto situation does not match because the register was not updated when there were subsequent transactions, particularly for inheritance, and/or there are overlapping tenures (see Table 1. on page 9).

Unregistered lands generally do not have legal documentation describing certain evidence of the land right. People may amplify or exaggerate the extent of their interests and claim more than they actually have, or they may be unaware of their interests. Valuation of unregistered lands should include a full description of the legal tenures (registered and unregistered) and the other tenures that are unregistered land rights and claims. It should also include a description of difficulties and lack of clarity associated with these tenures and the assumptions the valuer has made about them.

As value is a socially constructed phenomenon, if a claim over an asset is sufficiently recognized socially, that claim has a value. If a claim over an asset is not socially recognized, the claimants are spurious and not parties to its market value transaction by definition. This concept is particularly important in unregistered lands where de facto ownership rather than de jure ownership is common. This is relevant in informal settlements on public land. In law, the government owns the land but in practice the market sees the ownership in fact (de facto) as those that occupy the land. The valuer would need to understand and take this into consideration for a valuation.

In some markets, the same physical plot/parcel can have numerous legal owners. In the Marshall Islands, the land has three equal, horizontal owners. One third is the user or usufruct (e.g. the farmer); the island chief has a third; and the chief of the group of islands has a third. This customary and traditional method is codified in statute. In many parts of sub-Saharan Africa there are secondary rights over land giving access to water, thatching material, fruit and rights of way for cattle. Some of these rights are seasonal and the valuer needs to be aware of how this works.

These situations affect a valuation. For the IVS market value definition, the parties are assumed to be at arm's length, taking into account the socio-cultural issues. Therefore, this is not a question of direct concern to the valuation, as the definition assumes that the seller is able to sell their land rights (whether legal or not). However, in terms of professional due diligence, the valuer should note and analyse the tenure/ownership and the extent of its uncertainty. The effect of this on the value of the land should be estimated.

If the valuer discovers that 'ownership' is uncertain he or she should discuss this with the client. This might involve the provision of a second value conclusion that includes the effect of the tenure indeterminacy and associated risks (depending on the intended use and users of the report). It is not the valuer's direct responsibility to determine ownership. However, it is the valuer's responsibility to discuss any uncertainty and consequent risks with the client. The valuer should document all assumptions they make as these will have a larger effect on the valuation outcome.

3.5.2 DETERMINING BOUNDARIES AND SIZE OF LAND

It is not the responsibility of the valuer to determine the correct boundaries and he or she does not need to know how the boundaries are determined in order to identify the physical and locational attributes in the valuation. While precision is essential in formal markets, it is not necessarily so in informal markets. Physical features (general boundaries) could be used as a start but a valuer might need to improvise to determine the boundaries and size of the land, where there are no cadastral surveys. The valuer should disclose how the information was gathered and used, and note any limitations of using such technology.

3.5.3 NO, OR UNCERTAIN, INFORMATION, INFORMATION ASYMMETRY, LACK OF TRANSPARENCY OF INFORMATION

The main challenges for the valuer when valuing unregistered lands relate to the opacity of the market. Land records may be poor, or non-existent and collecting data from the government may be extremely difficult, even impossible. Sometimes, particularly where compulsory purchase and evictions occur, there are dual markets: one for the de facto right and one for the de jure right, and there might only be a market operating for the de facto right.

This lack of published information, or difficulty in getting information has many effects, which include:

- Greater volatility of land markets.
- Market participants are not knowledgeable.
- Two-tier markets.
- Volatility in the business community.
- Impacts on the poor; because of “information and power asymmetries, communities may have little idea of the market value of their resources or the financial returns that can be derived from those resources” (FAO, 2012).

3.5.4 INABILITY TO OBTAIN APPROPRIATE COMPARABLE SALES EVIDENCE

A direct responsibility of the valuer is to get evidence on appropriate comparable sales. As every land plot, every buyer and every seller is different, the difficulty of obtaining this evidence applies to almost all markets. However, they differ in degree, so there are spectrums of markets, from the information rich to the information poor. The more any of these qualities are insufficient in a market, the more that valuers are required to interpret it (Mooya, 2016). Unregistered lands are prime examples of when there are insufficient information and require greater value interpretation.

3.6 WICKED AND COMPLEX

The challenges outlined above demonstrate just how complex and wicked markets can be. Yet markets manage these wickedly difficult problems all the time by satisfying the market value definition about parties to the transaction being reasonably well informed, normally diligent and that the parties agree about the market value definition (McDermott, 2016). This also holds for markets of unregistered lands.

These wickedly difficult problems are overcome because: “Value is a socially constructed phenomenon and the determination of value cannot be divorced from the social context in which it occurs” (Hutter and Throsby, 2011). This is particularly important with unregistered lands. In other words, people use their knowledge of the social context of value to engage with markets that are often complex and wicked, and to satisfy the market value definition. Valuers using their expertise should also use the social construct of value to estimate amounts in accordance with the market value definition, where there is an absence of recent, directly comparable sales.

The valuer’s role is to read how the market participants themselves have resolved all the wicked problems and theoretical difficulties by agreeing on the value of the unregistered lands concerned. In the absence of primary evidence of properly analyzed comparable sales, what secondary evidence is there that those participants satisfying the definition of market value would use? Recalling that participants are assumed to act only on information and market sentiments that reasonable due diligence in that market would uncover, what strengths, weaknesses, opportunities and threats would that disclose, and how would that affect the value? Such matters should be articulated in a speaking valuation, with the contradictions in such evidence addressed as well as its consistencies, allowing the reader to better understand the situation.



BUILDING THE FRAMEWORK FOR VALUING UNREGISTERED LANDS

This section outlines a comprehensive and practical framework for policy makers and practitioners to improve the efficiency of the market and to support the valuation industry to value unregistered lands. Policy makers and practitioners should use all or most of the elements outlined below. The framework elements are in four sections. The first covers the IVSC standards and the social, cultural, religious, spiritual and environmental aspects of valuation, and how to use existing valuation methods are adapted for unregistered lands. The second section is about how to understand value in unregistered lands in developing countries. The third section is about ethical standards, gender responsiveness and the affordability and the cost of valuations. The fourth section is on legal and regulatory frameworks, financial and banking systems, information and IT systems, using local knowledge and practice and capacity development.

4.1 GLOBAL STANDARD VALUATION AND THE IVSC FRAMEWORK

While the focus of the IVSC standards is on the formal market, many of the standards are universal. This guide applies these international valuation standards to unregistered lands. The feasibility of obtaining an accurate valuation of unregistered lands using standard valuation procedures will vary greatly with circumstances. However, it is still relevant to describe the standard procedure, as this process should be the first recourse of the valuer of unregistered lands and will provide the framing for any additional processes applied. The IVS market value definition is a major building block for this guide. The IVS framework includes generally accepted valuation concepts, principles and definitions for IVS compliant valuations.

4.2 THE SOCIAL, CULTURAL, RELIGIOUS, SPIRITUAL AND ENVIRONMENTAL ASPECTS OF VALUATION

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security state that: “Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable” (FAO, 2012).

This guide uses the IVS definition of market value but suggests that the socio-cultural context needs to be considered, as appropriate. The definition links to the socio-cultural, religious, spiritual and environmental side of valuation in a number of ways. It is important for valuers of unregistered lands because:

- 1) Valuing land rights other than private rights using only standard valuation methods may lead to undervaluation. The valuation of socio-cultural values needs to be included to ensure that owners receive adequate compensation (Mitchell et al (2015), Alias & Daud (2012), The Independent Institute (2010), Sheehan (2000).
- 2) Many countries have plural legal systems, particularly regarding land. These legal systems include Western laws, customary or indigenous law and practice, and religious law. Often there is conflict between the different laws and practices and forum shopping for dispute resolution. Often the customary or indigenous law is unwritten. In majority Muslim countries, there may be special courts dealing with inheritance of land and property as well.



Bandiagara Escarpment with dwellings in Central Mali listed in the UNESCO World Heritage. Photo © United Nations/ Marco Domino.

- 3) Many countries have significant amounts of customary or indigenous territory, particularly in rural areas, where social, cultural and spiritual values are important.
- 4) Occupants of unregistered lands often use socio-cultural, religious, sacred and environmental evidence to describe their land rights. For example, graves are significant evidence of rights in many parts of Africa.
- 5) Islamic inheritance systems, with shared land rights and Islamic awaqqf or religious land, apply to large areas of land that may not be in Muslim majority countries.

The social, cultural, religious, spiritual and environmental values have to be considered because people make deals on the basis of the values they hold.

Valuers need to use good judgment about the social, cultural, religious and environmental factors when

willing buyers and willing sellers are negotiating. Are these factors important for the buyer? For the seller? How are they accounted for and by how much? Valuers need to be able to work with these factors and take them into account in their valuation methods. The valuer needs to develop knowledge of the selling community, such as a customary or indigenous group, so that they understand the thought processes and value systems of both the buyers and the sellers.

Selling customary or indigenous land is often not allowed because of cultural norms. People may not have land value and land market experience and knowledge. Land is often not understood purely as a commodity. However, the IVS definition of market value and how the parties should behave is still a requirement. As Knight, Brinkhurst and Vogelsang point out (2016), the sellers should also have a reasonably well-informed and normally diligent understanding both of the market and the social market value of land in their area and what is in the deal for the buyers. That is, the selling community should still have the required level of understanding of

what the value of the land is for the highest and best user. This is true even if they are not currently using it to its highest and best use. While making the assessment of the seller's knowledge is the responsibility of the valuer, the capacity development that may be required could be seen as an additional service that the valuer may supply.

4.3 USING EXISTING VALUATION METHODS BUT ADAPTED FOR UNREGISTERED LANDS

Valuers should undertake valuations to the highest and best use unless specifically instructed otherwise. They should apply valuation methods used for valuing registered lands and adapt them for unregistered lands. Depending on the circumstances, including the scale and complexity of the valuation problem, this should always mean the application of standard international valuation principles, practices and protocols as adapted to the local market circumstances, including the social market. The typical principles and practices of valuation might apply everywhere, or some might apply only in certain circumstances.

All aspects of the valuation of unregistered lands need to be considered within the framework of the national laws and regulations of each country. Each country is different due to hugely varied histories and cultures. Nevertheless, it is possible to identify common issues and problems and to give appropriate responses to them. There are professional standards that can be applied to all cases and, where capacity is lacking, there are possible solutions that can still produce a legitimate valuation.

If and when necessary, the valuer can adopt more innovative methods. However, these should incorporate the IVS standards or explain what limitations in the market concerned prevent that. Furthermore, they

should not be misleading, and should comply with all the relevant local laws. If the laws do not cover unregistered lands, the valuer should fully describe and adapt them to unregistered lands, as appropriate. Innovative applications or techniques can be formally and informally peer reviewed by networks of valuation practitioners, who are common in the formal and informal land markets linked to unregistered lands.

Innovation might also be required in getting information that can be a significant cost factor. To limit costs, the valuer could apply different valuation theories at a relatively undeveloped heuristic level, if experience demonstrates this to be appropriate in the market. Also, less expensive para-valuers could provide much of the information.

Valuers should gather the relevant social, economic and environmental information that would be taken into account by buyers and sellers meeting the market value definition's requirements, as well as social market value information, ancillary market data suggestive of trends and likely market performance. Also, as a valuer is an expert in reading the market in that jurisdiction or area, the valuer needs to learn lessons from local practice about how the market works, and both interpret data and adapt their valuation methods accordingly.

However, when valuing unregistered lands, there will be cases where, after performing to standard, the valuer realizes that they cannot deliver enough evidence to adequately support any estimate of value. This should be stated in the valuation so that the client is sufficiently informed to make the appropriate adjustments for risk. Sometimes, a presentation of the best available raw data might be sufficient to meet the needs of the users, allowing them to interpret the data and make relatively better-informed decisions. This is despite data being insufficient to make a value conclusion that meets the IVS definition of market value.

4.4 UNDERSTANDING VALUE AND HOW IT APPLIES TO UNREGISTERED LANDS

Valuers have a vital role to play in reading non-transparent markets and helping market participants to anchor their expectations appropriately. The land and property market patterns and pricing mechanisms are based on people buying and selling land and property. However, where markets are thin and there is very little buying and selling, (e.g. customary land), the market value pricing mechanisms do not provide predictable patterns of prices. However, a pricing mechanism is still needed, so the market value convention is used to guide parties in this situation to keep the market moving, growing and improving in efficiency over time. The valuer working with market value should recognize the difference that lies behind the pricing mechanisms and patterns of prices in competitive markets in comparison to thin markets, such as is often found in unregistered lands, and adjust their sales analysis and valuation methods accordingly. They should also study the market dynamics of social markets and align their findings where possible to pricing mechanisms and patterns of prices in competitive markets.

4.4.1 MARKET VALUE

Market value is a rational value of one's land or property. A market valuer however, has only one objective: to estimate what amount an asset or liability would exchange for on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing. It is assumed that the parties had each acted knowledgeably, prudently and without compulsion.

Estimating value is complex: there is no one-size-fits-all method, particularly for unregistered lands also because of the social market aspects. The first step for

a valuer, no matter what the market, is to investigate the circumstances of sales of land similar to that being valued, to see how well those sales comply with the IVS definition of market value, as well as other market and social market data on which value rests, and compare all of the relevant data to the intended use and users of the analysis. If the sales data is comparable and meets that market's standards for an acceptable market value transaction, they may be used as evidence. If there is insufficient market evidence, or the data is not relevant, the valuer should consider the quantity and quality of the less perfect market data in this market and/or investigate similar markets elsewhere. A valuation can still be done even when there are no comparable sales, once all available information has been gathered, but greater care and more creative and innovative analyses of the available imperfect market and social market data is required to produce a valuation report that is relatively accurate and not misleading in its conclusions.

4.4.2 BASIS OF VALUE

A professional valuation of unregistered lands should state the type and definition of value and cite the source of the definition. "The basis of value is a statement of the fundamental measurement assumptions of a valuation" (RICS Red Book, 2017a). The most commonly used basis of value is the IVS definition of market value, which is based on the most probable price in a free and open market.

Another basis that is important for unregistered lands is equitable value, where no voluntary sale is possible. In this situation it is not possible to meet the IVS definition of a willing buyer and willing seller. Instead, equitable value should be used as a way of implementing an IVS-standard value definition when the strict market value definition is not applicable. The definition of value is likely to be set by local laws.

The basis of value concerns what you are valuing, why you are valuing it and its relationship to the market. The appropriate basis will depend on the purpose of the valuation, intended use and intended users. A valuation for financial reporting purposes will be different to one for secured lending purposes. Either of those bases of value could apply to unregistered lands. For example, if they were being held by a public organization that needed to report on their financial statements, or if a lender is using the land for loan collateralization. Valuations of unregistered lands are often used in determining compensation packages, which should include the social market aspects.

4.4.3 MARKET PARTICIPANTS

The term 'market participants' relates to the whole body of individuals, companies or other entities involved in land and property transactions or who are contemplating entering into a transaction. These are 'typical' buyers and sellers that form the market and social market and not 'specific buyers and sellers'. The market is where buyers and sellers complete their trade, and this is common with unregistered lands. Transactions are completed through brokers, elders and family members, private conveyancers, middlemen, community leaders and others. As these transactions are seldom recorded in written public records, the valuer may ask questions of these participants (see Box 1. above).

4.5 ETHICAL STANDARDS

The International Valuation Standards Council (IVSC) has a Code of Ethical Principles for Professional Valuers for valuers worldwide. The code is of special importance in the context of valuing unregistered lands because it "is fundamental to the integrity of the valuation process that those who rely on valuations have confidence that

those valuations are provided by valuers who have the appropriate experience, skill and judgment, who act in a professional manner and who exercise their judgment free from any undue influence or bias" (IVSC, 2011). The code provides five fundamental principles:

- Integrity: to be straightforward and honest.
- Objectivity: not to allow conflict of interest, or undue influence or bias to override professional or business judgment.
- Competence: to maintain the professional knowledge and skills required to ensure that a client or employer receives a service that is based on current developments in practice, legislation and valuation techniques.
- Confidentiality: to respect the confidentiality of information acquired as a result of professional and business relationships and not to disclose such information to third parties without proper and specific authority (unless there is a legal or professional right or duty to disclose), nor to use information for the personal advantage of the professional valuer or third parties.
- Professional behaviour: to act diligently and to produce work in a timely manner in accordance with applicable legal requirements, technical and professional standards. To always act in the public interest and to avoid any action that discredits the profession.

More ethical standards may be specified either under law or through other professional valuation organizations, and human rights international standards should be followed to avoid human rights abuses.

The valuer needs to be unbiased under all conditions; he or she is required to read the market, analyse it and use professional experience and judgment to make an objective valuation. Unless making clear to all affected parties the role change, a valuer is not to be an advocate for any party but is an expert witness for the potential adjudicator. Judgments should be seen to have been made in an environment that promotes transparency and with minimal influence of subjective factors for valuations to be deemed credible. The valuer should avoid conflicts of interest issues, and the appearance of a conflict of interest. The valuer should remain professional and neutral during disputes, evictions and expropriations in a way that also gives assurance to the most vulnerable people, the poor and women. The valuer has a vital role to play to support dispute resolution, mediation and arbitration.

Valuations of unregistered lands can be highly emotive; in some situations, the most vulnerable people are being forced (directly or indirectly) from their homes and businesses. It is important that a valuer remains objective and carries out their valuation without any bias to either party, always ensuring ethical standards.

4.5.1 STANDARDS, COMPETENCE AND SKILLS

The IVSC states that “institutions with regulatory functions over the valuation profession should ensure adequate opportunity for its development as this profession is central to the proper functioning of the property market and by extension the economy” (IVSC, 2001). This also applies to the other land and property professionals such as agents / brokers, counsellors / advisors and land and property managers.

Competence is having the skills, knowledge and experience to complete the valuation assignment

properly. It is a function of the property type and its market. When valuing unregistered lands, external valuation experts may need to work with local valuers to provide the appropriate expertise and knowledge.

When a valuer finds that they lack certain competencies to undertake a valuation, they are required to disclose this to the client before accepting the assignment. They should explain how they intend to meet the relevant expert competency standards, for example, those of local legislation or the IVS.

4.5.2 ENSURING GENDER EQUITY DURING VALUATION

The GLTN's Gender Evaluation Criteria (UN-Habitat, 2011) with the emphasis on equal participation by women and men can be adapted for valuation and used as a framework by valuers. It states that valuation should:

- Promote innovation in economic models to favour women's benefit from land in situations where the socio-cultural context disadvantages women, particularly when evictions, foreclosures, access to credit and compensation for government-led acquisitions are concerned.
- Encourage a market that is accessible to women and provide equity for women and men. It should encourage land markets that are fair and affordable to both women and men.

A few general questions valuers can ask during valuation about how their work impacts women and what they should do are given in Table 2. These are drawn from the Gender Evaluation Criteria's 22 questions (GLTN, 2009).

Table 2. How to evaluate whether a valuation is gender responsive

Evaluation question	What needs to be done	What should the valuer do
1. Is the tool transparent and inclusive for both men and women; is the information clear to, and does it empower, both women and men to use the tool and know their rights related to the tool?	<p>Provide opportunities for enhancing capacity development for both women and men.</p> <p>Ensure availability and transparency of the tool, and to clarify any misconceptions that prevent maximum use by both women and men.</p> <p>Enable both women and men to influence processes.</p>	Part of the market value definition is that all the intended users, men and women equally, understand their particular market. With unregistered lands this is likely to require capacity development for both women and men. In cases of compulsory purchase, the valuer can assess whether both women and men know their rights with regard to the value of their land and the compensation package.
2. Is the tool based on the principle of equality and does it protect women's land/tenure rights?	Stores data on the individual owner of the parcel. The table has fields such as full names, date of birth, address, national ID, and so on.	Valuers should take special care to understand the tenure and use rights held by women as these can be missed because women's land rights are generally nested within family rights. This is particularly important for inheritance.

The valuer using the IVS definition of market value needs to take the factors in Table 2 into account in regard to 'willing buyer and willing seller', 'each acting knowledgeably prudently and without compulsion', when analysing sales and other market data. Gender inequality should not impact the market valuation. The prudent valuer should examine the available data for any evidence that such inequality has affected the comparable dataset. Valuers should work to limit the perpetuating of gender inequality in their valuations and within their markets. Training of valuers in gender aspects might be required to ensure appropriate gender responsiveness.

4.6 AFFORDABILITY AND COST OF VALUATIONS

The complexity of the valuation and its cost should be related to the value of the land and the purpose of the valuation. This is a core principle for a fit-for-purpose approach. It is critical for future-proofing valuation capacity and embedding incremental formalization over time. Appropriate valuation costs and methods are key to facilitate the bottom end of the market and its formalization over time.

The purpose, intended use and users of valuation and land consultation services determine the scope of an assignment and its cost. The cost is not the major issue when valuing for compulsory purchase or expropriation

because the valuer is paid by the expropriating party, and the transaction is large. The operative principle is that compensation for expropriation should be on just terms. This means that, at worst, the dispossessed people should be no worse off after expropriation than they were before. However, cost is always an important consideration of the client or the party who is paying for the analysis, and valuers who cannot perform under realistic cost / time constraints will in time lose their contracts to those that can and do.

Cost is a larger issue when the client is poor and vulnerable. The affordability of the valuation method and report format relative to the unregistered land rights being valued should be considered carefully to find fit-for-purpose, flexible and incrementally scalable solutions to enhance the land markets from the bottom up. More innovative and highly cost-efficient uses of transparent data, para-valuers and other brokerage professionals may be able to support the many day-to-day valuations and land-related decisions required at the local level for the very smallest transactions. The valuer should refuse the assignment if they cannot produce a reliable and credible valuation that is not misleading, and which the client can afford. Where cost is a factor, options to decrease costs while maintaining ethical and professional standards could include:

- A more scaled down scope of work.
- A more flexible and limited consulting analysis that can fulfil the client's consultation needs.
- A standardized form of report that could result in a relatively reliable valuation that is not misleading.
- The use of new technology where conditions allow which could decrease the price, such as mass surveys, satellite imagery and drones.
- A valuation using basic data in initial circumstances that can be improved as data improves and value increases over time, such as is usual in urban settings.

Finally, an in-depth analysis is needed of how to overcome land-related challenges and spur the growth of fair and transparent land markets built on the tiniest transactions that are below the time / cost budget of an IVSC-compliant valuation. This is a difficult but important topic that is beyond the scope of this guide.

4.7 LEGAL AND REGULATORY FRAMEWORKS AND ADMINISTRATIVE STRUCTURES

Countries are encouraged to adapt and, where necessary, develop their legal frameworks for the valuation of unregistered lands. This can strengthen their economies through the more efficient use of their land resources and address human rights issues in a fair and transparent manner.

Legal frameworks should be reviewed and amended to ensure:

- That they provide transparent, fair, efficient and accessible (cost/time) systems for the explanation of 'ownership', use and other land rights.
- The protection of rights and access to land for the disadvantaged.
- That state/government interventions in land tenure and use are restricted to a justifiable minimum, including effective provisions for planning and environmental protection.
- That state/government ownership of land is managed in an accountable, transparent and efficient manner. This applies to both registered and unregistered lands.

The VGGT give guidance to countries on policies and law for the transparent valuing of land and the

prevention of corruption (see section 2.2.4) (FAO, 2012). Governments should consider adopting and domesticating the IVS valuation standards, human right standards such as the VGGT, and international accounting standards as part of their legal framework both for registered and unregistered lands. This can be done directly by passing it into law or indirectly by authorizing the appropriate professionals to adopt the standards. Meaningful enforcement of these standards also needs to take place.

Also, while many countries have a legal framework for the valuation of registered lands, this framework is sometimes not applied to unregistered lands. This guide does not propose that all land should be registered; rather the legal framework should be reviewed and made applicable for unregistered lands. This could cover:

- 1) The regulation of valuers by the state.
- 2) Valuation for private purposes, for large-scale land acquisition by investors, for mortgage lending, taxation, inheritance.
- 3) Fair payment and compensation for resettlement when land is compulsorily acquired by government, particularly customary and unregistered lands, including for social, cultural, religious or spiritual assets associated with customary and indigenous land, as outlined in the VGGT (FAO, 2012). This often needs to be further developed in law to enhance the fair and transparent management of these factors, including the compensation package associated with resettlement.
- 4) The domestication of the human rights standards outlined above (see Part 2).

- 5) Addressing the conflicts linked to plural legal systems that may be in place when there is a colonial history and customary or indigenous or religious land. These conflicts can unsettle land markets and need to be addressed in a way that includes community involvement, best practice compensation packages and government enforcement to improve the efficiency of the land and property market.
- 6) Creating transparency and giving free and open access to all government transactions. This will mean changing the culture in the government office to one of public openness and scrutiny. In time, this will encourage the civil service to be more accountable and the public to be more trusting.

Governments are encouraged to domesticate this guidance by enshrining this in their national laws and regulatory frameworks.

The administrative structure is essential for effectively implementing the legal framework. Institutional structures for the valuation of unregistered lands dealing should be monitored, as there are greater uncertainties and opportunity for non-IVS compliant behaviour. However, such administrative structures, for supporting and enforcing IVS valuation, may be beyond the capacity of some countries.

4.7.1 COMPULSORY PURCHASE AND THE LAW

Valuation of unregistered lands is often linked to compulsory purchases. Current international valuation standards for this are generally for registered lands. Countries should prioritize laws, regulatory frameworks and administrative structures for compulsory purchases that conform to international best practices, both to valuation and human rights standards, because of the possibility of abuses.

Often legislation and institutional frameworks in developing countries for valuation need to be reviewed. Significant changes may be needed for the broader, emerging, national legal and administrative frameworks for both valuers and the land markets they read to evolve together into a more efficient, transparent and just future for all participants. The valuation industry, along with governments, financial / banking / insurance providers, property developers, national pension funds (as major property owners), development banks and NGOs need to work together on this. They should jointly develop appropriate legal, regulatory and administrative frameworks for efficient and transparent land markets. Until this is done, compulsory purchase will continue to be a key cause of land conflict.

Valuers should be familiar with the relevant laws in the country when valuing for compulsory purchase. They should also take human rights standards into account, as outlined in the VGGT (FAO, 2012) and in the International Federation of Surveyors Publication 54, Compulsory Purchase and Compensation: Recommendations for good practice (FIG, 2010).

This FIG policy statement presents their recommendations for good practice in this field and compensation in land acquisition and recompense. It aims to support and inform discussion between valuers, surveyors, real estate experts, financiers, urban planners, researchers, teachers and decision-makers, and to develop common principles and the sharing of good practice for shaping the future of compulsory purchase and compensation. It gives support to professional organizations, including in the area of capacity building, and helps to achieve social justice in a resilient balance between economic development, environmental protection and the livelihoods of individuals and local communities" (Viitanen, Falkenbach and Nuuja, 2010). The comments

in this FIG publication, while focused on registered lands should also be applied as appropriate to unregistered lands, because it is often acquired through compulsory purchase.

4.8 FINANCIAL AND BANKING SYSTEMS

Financing increases the number of people with the ability to own land and property and allows owners to extract their equity to invest in other ventures. A properly regulated and healthy financial and banking system and an efficient land and property market can be mutually supportive and a generator of financial growth and stability for the community. While loans are generally made against registered land rights, in some countries they are also made against unregistered land rights.

Development banks and international financial institutions have a major role in unregistered lands also because of large development projects. The IVSC has also recommended to these institutions that qualified, professional valuers should do the valuations using IVS and, when these organizations promote policies for valuation standards to different countries, that these should minimize imbalances in the property market and support the restructuring and strengthening of property markets and financial systems (IVSC, 2011).

The World Bank, as mentioned above, has recently developed new approaches to the valuation of land for large development projects. Their approach is quoted here at length as this gives an important frame to the way development banks think about valuation. It should be noted that the World Bank's definition of "replacement cost" deviates from that found in many valuation textbooks, but it has major implications for unregistered lands, where many big development projects are initiated:

“Replacement cost” is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labour for construction of structures or other fixed assets, plus transaction costs. In all instances where physical displacement results in loss of shelter, replacement cost should at least be sufficient to enable purchase or construction of housing that meets acceptable minimum community standards of quality and safety. The valuation method for determining replacement cost should be documented and included in relevant resettlement planning documents. Transaction costs include administrative charges, registration or title fees, reasonable moving expenses, and any similar costs imposed on affected persons. To ensure compensation at replacement cost, planned compensation rates may require updating in project areas where inflation is high or the period of time between calculation of compensation rates and delivery of compensation is extensive.” (IBRD-IDA/World Bank, 2017).

4.9 INFORMATION AND IT SYSTEMS

Automated valuation systems (AVMs) and mass appraisal systems are an emerging technology that is useful to valuers. However, unregistered lands in developing countries are often not homogeneous and the use of AVMs may not be accurate enough to rely upon. Adaptation of these methods for valuing unregistered lands is not fully known but they have great potential.

If the valuer determines that the evidence in the market is insufficient, the valuer should specify this in the valuation report noting the difficulties of obtaining sufficient evidence and its effect on the conclusions. It should state what effort has been made to obtain the relevant evidence and the valuer may wish to reserve the right to amend their report if new evidence emerges. However, for any such disclaimer to have effect, the valuer should not only claim to have made adequate and sufficient effort to meet the intended use and users of the document, but should have actually done so. Disclaimers will never serve as a cover for negligence or fraud. The nature of unregistered lands means that the valuer is likely to have to work harder to be able to claim that they have made adequate and sufficient effort in their disclaimer.

Valuation is improved by a land administration system’s data. Fit-for-purpose land administration and its data can make land markets and valuers more efficient, especially where the land administration system is well documented with broad coverage of the land rights. An important element of transparency is a reliable government land information system (LIS), even when it does not have high-quality data. However, unregistered lands are outside the LIS, which usually focuses on registered land and cadastral information. Some governments have created a GIS for unregistered lands using fit-for-purpose tools and approaches. Governments should consider identifying and creating a land inventory or GIS of the various categories of unregistered lands, such as rangelands, coastal strips, subsistence agriculture etc. to make the valuation of unregistered lands more efficient. For approximations, this would reduce the need for valuers to do field inspections that increase costs. However, unless instructed otherwise in writing, physical inspections will be always required for compulsory acquisitions.

Governments need to commit resources (human and infrastructure) to regularly gather information and to continually maintain the LIS/GIS. Government officials will need to be customer focused by providing current, accurate and meaningful information to help the market grow and function efficiently and enhance the economic performance of the region. From a valuer's perspective, LISs/GISs that do not provide continuously updated market evidence rapidly become less and less relevant.

Finally, to overcome information challenges, a coalition of global and national surveying, real estate, valuation and housing associations from RICS and FIG to the Russian, Chinese, Arab and European associations are developing the first International Land Measurement Standard to create consistency in land information systems' reporting standards across the globe. ILMS is an international, principle-based standard for recording and reporting information and material relevant to land transfers. It will reduce risk in the land transfer process by creating consistency of application and facilitating and supporting land governance and land registration. ILMS will support global consistency by classifying, defining, measuring, analysing, presenting and reporting land information at a project, regional, state, national or international level. It is therefore both a standard and a framework for reporting. It will be fit-for-purpose, flexible and scalable and include unregistered lands.

4.10 LOCAL KNOWLEDGE AND PRACTICE

Local knowledge and practice are of fundamental importance for unregistered lands and local experience will be needed to value it. Local valuers and/or para-valuers could be vital as they speak local languages. Para-valuers are less qualified, less expensive people supervised by the professional valuer and trusted enough for the valuation to be signed by the valuer

concerned. They can also be trainees or students and can do much of the work. This would facilitate local knowledge transfer during valuation, could decrease costs, potentially increase accuracy, and enhance the para-valuers professional development. They could provide the knowledge of local laws, standards of completion, compliance with local standards and local standards of measurement. It would also increase the number of local people working on valuing unregistered lands and increase local understanding of land markets. In this scenario, valuers would need to disclose to the client if they lack any competency and how they intend to meet the relevant expert competency standards. The valuation could be signed by both the professional supervising valuer and the para-valuers. This could be tied to an explanation of what each signature 'warrants.'

Finally, as the Namati case (see section 5.4.1 below) demonstrates, landowners, particularly rural-owners from customary/indigenous backgrounds, can lack knowledge and information about land rights and the value of their land to external buyers. Particularly in the case of compulsory purchase, they should have readily accessible, affordable, competent and unbiased land and property advice and local para-valuers can play an important role, while working with professional valuers in large-scale land acquisition situations which involve payment and compensation packages.

4.11 CAPACITY DEVELOPMENT APPROACHES

Many developing countries are likely to need large-scale capacity development to value unregistered lands at scale and more valuers need to be trained. In some countries non-valuers are doing valuation, such as other land professionals and agents/brokers and property managers and untrained government officials. They could be brought into the industry.

Valuers need more than technical skills; they need to understand economic and environmental development trends and their link to valuation; and that valuation is not done in isolation from these trends. To value unregistered lands, they may need to have a broader range of skills. For some assignments identified below only a few valuers will have the requisite skills yet these are key valuations for countries. Valuers will need to know how to:

- 1) Undertake fit-for-purpose valuations that cover most of the land market, including registered and unregistered, high-income and lower-income clients. This is needed to build the markets, future-proof the industry, increase efficiency of the markets and the economy, and create affordable approaches for all market segments, including the poor. The skills to value unregistered lands should be incorporated into the tertiary education curriculums and in continuous professional development for registered and practicing surveyors.
- 2) Use the global frameworks that impact valuation, such as the SDGs, VGGT, NUA and international development bank safeguards, as well as other human rights instruments. These frameworks affect the work of valuers in two major ways. Firstly, they describe the human rights standards that should be applied, for example during compulsory purchase. Secondly, they assist the valuer in understanding the broader development trends and their national application and how to link valuation to these trends.
- 3) Give guidance on balanced large-scale land-based investments to national governments, local authorities and communities.
- 4) Give guidance for city extensions, urban redevelopment and slum upgrading. Valuers need to be familiar with the financing tools linked to land-based revenue generation. These focus on the legal and economic foundations of value capture, including quantification, and the capture and distribution of value increments.
- 5) Give guidance in areas with environmental issues, such as those related to natural resources and potential land degradation, among other things. Valuers need to be able to give ethical advice on how to take into account and value the natural resources, how natural resource extraction can impact communities negatively, and to what extent this needs to be taken into account in any compensation package.
- 6) Link with the global industry and information. Local valuers are no longer globally isolated. They are linked into a wide range of global arrangements, such as affiliations, accreditation, education, conferences and social media information. The link between international valuers and local valuers continues to strengthen. All these are major capacity development opportunities to gain new skills.
- 7) Use the IVS market value definition including social market values. Valuers need training on issues such as customary tenures, informal settlement tenures, political economy analysis, the continuum of land rights, governance structures within communities, valuation methodologies specifically appropriate for analysis of unregistered lands in specific regions, and risk assessment in regard to group and individual rights and others.

- 8) Promote and follow IVS standards to improve ethics and address gender inequality in their valuations and within their markets. This could include additional work on capacity development.
- 9) Work in a participatory manner. Valuation in developing countries' unregistered lands is not just a technical, top-down exercise. It needs to be more bottom up and include a wider range of stakeholders, including the occupants of the land being valued, wherever possible. Capacity development involving a transfer of knowledge about valuation and compensation packages to occupants, such as customary occupants and women, is likely to be needed. Equally, the occupants will be able to help the valuer understand the social market operating in that area. This will make it easier to maintain ethical standards.
- 2) Government involvement in strengthening the national valuation industry through the law; developing the necessary skills and competencies within government and within the education and training sector.

One of the first steps should be to establish or expand the existing association of valuers. The association should regulate valuers and collaborate with the International Valuation Standards Council. This organization could license or provide designations for appropriately qualified and experienced land and property professionals for consumer protection. The IVSC guidelines for Establishing and Developing a Valuation Professional Organization (2013) can be used for this.

There is material available to train valuers to be more well-rounded, such as the IVSC guidelines on A Competency Framework for Professional Valuers (2012).

A broad range of national institutional strengthening is likely to be needed to be able to value unregistered lands, such as:

- 1) A review and strengthening of the valuation policy, law, regulations and institutional frameworks, including for unregistered lands, and the domestication of international standards. This is likely to need policy and law governing valuation practice and standards where the parameters for valuing unregistered lands are outlined to ensure uniformity of values for similar properties.

There is often insufficient capacity to create a valuation institute where there is a limited number of national valuers. One way forward may be to join a regional or global association. Such an organization could be responsible for developing, maintaining and enforcing professional codes, ethics and standards for valuers. They could oversee national valuation institutes and contribute to improvements in education and training capacity. RICS has such an arrangement whereby members comply with the RICS Redbook and join the RICS Valuers' Registration Scheme.

Formal accreditation steps are needed to enable people to enter the valuation industry, either legal or by professional membership or both. Some form of accreditation from a professionally relevant institution is important for both formal and informal valuers, also because of the large number of practising informal valuers in developing countries. Accreditation should

not be a barrier but instead should enable land valuations in unregistered lands to be provided with reasonable information and financial cost levels.

3) Agents/brokers, property managers and other land professionals who have demonstrated capacity and ethical behaviour, even if they do not have the academic qualifications, should be able to apply for professional valuer recognition and be accredited/licensed through what is known as a 'grandfather clause'.

4) Fit-for-purpose approaches that will incrementally improve formal valuer qualifications are needed. This includes the introduction of valuation more strongly in tertiary land education, continuous learning through short courses, an increased role for the valuation industry in capacity development in terms of setting standards for training, setting exams, accreditation, implementing short courses etc.

5) Partnerships between international valuers and local valuers, and para-valuers could be key to capacity development.

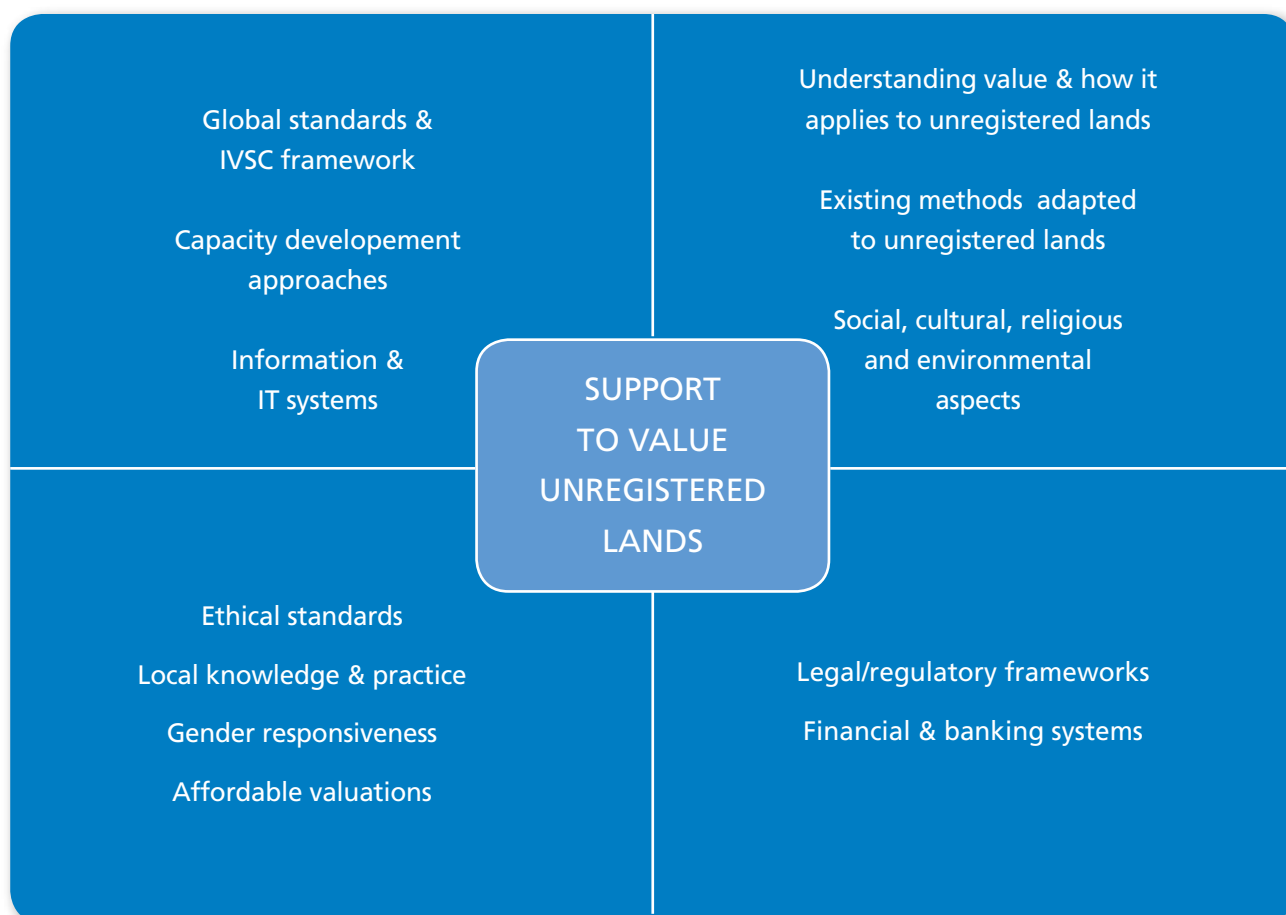



Figure 3: Framework for valuing unregistered lands.



IMPLEMENTING THE VALUATION OF UNREGISTERED LAND FRAMEWORK

As this is a guide and not a manual, only a few key valuation tools and approaches adapted for unregistered lands are described below by way of illustration only. Additional methods for valuing unregistered lands are still being developed. Existing methods will need to be tested more in the unregistered lands environment before comprehensive manuals can be written.

This part has 3 sections. The first section identifies established approaches to valuation that could be applied to unregistered lands. It describes issues related to compulsory purchase, including the social market, disturbance, special value to the owner and solatium, as these are of special interest to many stakeholders because of LSLBI issues. The second section describes some innovative valuation methods and concepts for unregistered lands, such as: speaking valuations; visible boundaries rather than fixed boundaries; and land readjustment using value-based financial instruments. The third section focuses on one example of how to value unregistered customary land.

5.1 USING ESTABLISHED METHODS OF VALUATION FOR UNREGISTERED LANDS

The valuer should use the established principles and practices to undertake a valuation to professional standards. This is done by stating where the land or property sits in the scale of values in the market or markets. Unconventional approaches may need to be considered alongside conventional ones. It is the valuer's job to consider and weigh all the available relevant and credible evidence. They need to determine if it is sufficient to support a reliable valuation as required by the intended use and users of the report and that it is not misleading.

Against this background some methods, or combination of methods, that have been used for valuing registered lands may also be useful for unregistered lands:

- The Direct Comparison Method. Limited quality transparent data can make this approach difficult.
- The Capitalization of Rental Values (and other income analysis methods). It can be used if there is adequate information on income, capitalization rates and expenses and if the market recognizes this approach for the analysed property type.
- Hypothetical development approach. This approach is often used for compulsory purchase of unregistered lands, particularly by government agencies, to budget for developments prior to any compulsory land acquisition. IVS standards, aligned with social markets and international human rights standards, need to be maintained in valuing the land and establishing the compensation package. Where appropriate, IFI safeguards need to also be taken into account.
- The Summation Method. This applies to unregistered land parcel valuation, especially in large, compulsory acquisitions and corporate projects. These transactions typically involve disparate land and building types over a wide area and various highest and best uses among the components of a greater land and buildings project. It will be common for a wide variety of differing valuation techniques to be required for individual component conclusions, followed by a determination of whether the greater land and buildings value is worth more or less than the sum of the parts. A disciplined analysis at each step is required in this methodology.

- Depreciated Replacement Cost Approach. There may be challenges in using this approach with data on depreciation, obsolescence, land sales and cost data potentially difficult to obtain.
- Macro methods. Macro or mass valuation methods often have higher degrees of inaccuracy, but tend to be low cost. They perform best when the assets being valued are relatively homogeneous, and when reliable transparent data is easily available. Many of these factors are not common in unregistered lands. These tools are also less accurate for specialized land and property types and tend to miss social value.

5.2 VALUATION IS A KEY ELEMENT OF COMPULSORY PURCHASE

The global needs for compulsory acquisitions are becoming more and more intensive. Barnes (2014) describes this from the personal to the global scale: "Land is an increasingly scarce and valuable resource ...The ability of public authorities to acquire it are becoming more challenging ...Developments in technology, transport and industry...occur increasingly rapidly... Compulsory purchase gives rise in a particularly acute form to the constitutionally important tension between public interest and private interest ...



Community meeting on customary land in Zambia. Photo © PPHPZ (People's Process for Housing & Poverty in Zambia).

The need to protect those people from whom land is sought to be compulsorily acquired requires close attention. Valuation techniques ... are also becoming more sophisticated and complex."

Valuation for compulsory purchase is one of the most complex and difficult valuations to undertake and valuers should be specially qualified in this market. Compulsory acquisition is usually a controversial activity. Much of the law, both national and international, that guides and enforces valuation principles and practices has emerged from laws developed to resolve controversies in this area. Controversy can emerge from the smallest plot of land acquired (for example, by local governments and utility companies) to the largest. There should be one set of principles and practices for both the rich and the poor for compulsory purchase of unregistered lands in developing countries. This guide outlines some of the key elements of a best practice compulsory acquisition scenario.

Agreement should be reached prior to the valuation for compulsory purchase about which are the parties to the agreement, which rights to land are acknowledged as compensable and how they relate to each other. For example, questions such as these should be asked:

- What is the relationship between formal and informal rights?
- What are the various use rights involved?
- Are the rights for a continuous period or rights for a one-off value?
- How should these rights be described and accounted for?

There is also a difference between market value and compensation. Internationally, but not in all jurisdictions, the overall principle of compensation is that those people whose land is taken or who are displaced should

be no worse off than they were before the acquisition and/or removal. Furthermore, the benefit of any doubt should go to the affected persons. In some jurisdictions the principle goes further, to insist that the dispossessed should be materially better off than before.

Compensation items should be considered as 'compensation' and not 'market value of the land'. As compulsory purchase often involves unregistered lands, valuers should be able to value the market and social market value of the unregistered lands and estimate the compensation package of the sellers. This estimate should also take into account IVS standards, human rights international standards and items specified in national laws.

There are five general heads of compensation to be considered as potentially requiring compensation in compulsory acquisition. These are severance, injurious affection, disturbance, special value to owner and solatium. Those that are more key to unregistered land valuations are described below.

Disturbance. This refers to all the many extra costs that affected parties may face if they have to move and set themselves up elsewhere. A point to be careful about is whether the legal domain allows disturbance if the difference between the highest and best use value and the existing use value exceeds the disturbance costs. Generally, but subject to local laws, these costs include removal expenses, professional fees, taxes, transaction and other charges. When it comes to businesses, they include: loss of profits for the period the disturbance lasts; the cost of reasonable time spent by the affected party in dealing with the removal and resettlement; any losses caused by forced sale of stock, plant and equipment; any loss of interest; and the costs in setting up the new premises. International human rights standards on this issue also need to be taken into account.

Special value to owner. Special value represents the price beyond the market value that, for economically rational reasons, the affected party would pay for the land rather than lose it. Monetary compensation will not always be able to cover all losses. In general, non-market valuation issues relate to social, cultural, religious, spiritual and environmental assets and relationships (FAO, 2012).

Solatum. Solatium is for non-monetary disturbances, such as the emotional disruptions that can be caused by the stresses of being required to move from one's home. Solatium, as a payment in solace to the affected parties, recognizes two things: that such damages can be very real and that they may be practically impossible to quantify in monetary terms. In some countries, solatium is tabled in law according to the length of time the affected party has lived on the land they are losing.

There is no market in solatium and it is not within a valuer's expertise to determine. As solatium is paid to compensate for compulsion, it does not meet the IVS definition of market. It should be a matter to be legally negotiated on a case-by-case basis. However, like market value itself, solatium is a socially constructed phenomenon and so could be estimated by similar deliberative mechanisms to market value decision-making. As valuers are often directly engaged in compensation decisions, they should be competent to advise on the interfaces of market and social market value and solatium issues.

The consequences of societal disruption may greatly exceed the market and social market value of the land itself for affected parties. The valuer's responsibility in such a scenario is to raise the issue in the valuation report as appropriate given the intended use and users of the analysis.

For example, were the affected parties made aware of comparable transactions and the effects they had on those other affected parties? The principle of comparison of like with like applies. If such matters were unknown to the affected parties, can the valuer still conclude that the affected parties were sufficiently knowledgeable and prudent in the circumstances? Should the valuer proceed without such knowledge of agreements made under comparable circumstances? After all, there are a vast number of scholarly papers also available on the Internet. Why should a valuer not consider using this material as part of their due diligence in the context of the knowledge and prudence requirements of the IVS market value definition? That may not be so, but it is up to the valuer to explain why not in the valuation. If the relevant knowledge is unavailable in that valuer's language, valuer networks should be engaged to make it accessible to that valuer. The valuer has a duty to not produce a misleading report. Discussion of solatium, especially in cases where it may represent a large percentage relative to market and social market value, should be considered part of the duty of the valuer. This is true even if no monetary value is given to it within the scope of work, the intended use of the report, and the resulting appropriate value conclusion. The land 'owner' in such a case is still one of the intended users and, as such, this issue is relevant. Also, the margin of error in the valuation is particularly important in compensation cases, and the person being compensated should not suffer because of the compulsory purchase.

This is particularly important for unregistered lands and compulsory purchase as it can often be highly emotive and involve serious legal consequence for the valuer and the possibility of human rights abuses. The highest level of IVS standards and methods should be adopted as appropriate to value the market and to establish the compensation package. The international human rights standards on this issue such as the VGGT, and where

appropriate IFI safe guards, also need be taken into account under the head of solatium.

5.3 USING INNOVATIVE VALUATION METHODS AND CONCEPTS FOR UNREGISTERED LANDS

Only a few of the key innovative valuation methods and concepts for unregistered lands are described below, such as speaking valuation, visible boundaries, value capture and the valuation of customary land. These are based on and adapted from existing methods for registered lands, or they are being piloted.

5.3.1 A SPEAKING VALUATION AND ITS ELEMENTS

To achieve IVS level professional-standard fit-for-purpose valuations of unregistered lands, the valuation report should be produced in a written format of some sort, also known in the industry as a 'speaking valuation'. There can be a wide range of formats with different details. There can be simple form reports or more complex, full-speaking narrative reports. The analysis could have the same rigour but the reporting is significantly different. A judgment call is needed on the scope of the report, whether it can meet the needs of the client, including the cost, time and affordability of the user, and still comply with ethical and professional standards.

Full-speaking narrative reports are advised for large or complex unregistered land plots because of their complex nature and the opacity of the market.

Valuers should use their own expertise to overcome data shortfalls. The speaking valuation should state how they resolved possible weaknesses in their valuation datasets when there is a lack of comparable sales evidence, a common situation in unregistered lands. The client receiving the report will have a much better idea of

where they stand in comparison with having no report, even if it only informs them that a market value, after expertly interpreting the evidence, can only be securely estimated as being within a very wide range.

A speaking valuation consists of several elements. Key ones relating to unregistered lands are.

Client needs. The valuer should find out from the client what they want in the valuation report. However, it is the responsibility of the valuer to create the report, provide enough information to meet the needs of the intended use and users of the analysis, not be misleading and maintain IVS standards.

Valuer as market expert. Valuers need to be an expert in that unregistered land market and if they lack certain skills they can partner with other valuers who can be a co-signatory to the valuation report. In some situations, para-valuers, trainees and students, supervised by the qualified valuer, could also assist or co-sign the report.

Market value identification. A primary step for a valuer of unregistered lands, no matter what the market, is to investigate the circumstances of sales of land similar to that being valued, to see how well those sales comply with the IVS definition of market value and if there are social or other market issues that need to be taken into account. Any shortfall or uncertainty should be understood by the valuer. Whether a qualified valuer is working with a local expert, para-valuer or on their own, the report needs to contain a description of the market value definition (or other valued interest) as it applies in the local market.

Setting out the scope of work. Fit-for-purpose means that there should be a focus on purpose before designing the means to be the most "fit" for achieving it; the approach requires flexibility in designing the

means to meet the current constraints; it emphasizes the perspective of incremental improvement to provide continuity (GLTN, 2016).

Based on a (unpublished) case study in the Marshall Islands undertaken for this guide, a speaking valuation is described in detail below and a number of key elements for a generic speaking valuation identified. Elements that should be noted in the speaking valuation are:

- The purpose of the valuation, including all potential challenges.
- With regard to public market information, any uncertainty of legal and boundary status etc.
- The valuation methods, including any innovations.
- The land registration system and local laws and practice, as appropriate, including the extent of their use and risks.
- The land rental market (formal, informal, residential and/or commercial) and government leases, as appropriate, where it has an impact on understanding market and social market value.
- The size of the market and any issues related to data collection because of size. Any interviews with other knowledgeable land market actors and their information should be analysed, interpreted and presented in a structured way. Any physical inspections of properties.
- Details of how evidence was compared, even if no direct market price comparison exists, for all the appropriate variables, such as whether it is commercial or residential land or property, lease or sale.

- How yields were ascertained.
- A final summary statement should indicate whether credible market and social market values were obtained or not.

International human rights standards. Where there is a possibility of human rights abuses, particularly during compulsory land acquisition of unregistered lands, valuers should protect all parties and themselves by noting the standards and which of these are under threat. This should be done for both public and private transactions. Valuers can also use these standards when estimating value conclusions used by government entities in compensation packages.

Legal, non-legal and illegal tenures. A full description of all the tenures, including registered, unregistered, overlapping, interests, rights and claims impacting the subject of the valuation should be given. The comparable datasets should reflect this full description of all tenures as much as is practical given the intended use and users. It should include a description of any difficulties and lack of clarity associated with these tenures and the assumptions the valuer has made about them. It should describe any difficulties or lack of clarity about who holds the rights and/or claims, describing whether the person who claims to possess the rights really is the one that does possess the rights, and in the manner held out to the potential purchaser in the transaction.

Where individual rights within group rights are being valued, a description of their certainty and any overriding group rights or market uncertainties with respect to the group rights should be noted. Equally, if group rights are being valued, then the individual rights within the group should be described and how overall values are apportioned within the group (if this is within the scope of work), with overlapping rights explained if applicable. Any market uncertainty should be noted.

The valuation should also make it clear if the transaction is about the legally permitted highest and best use or is one that is illegal but tolerated, or one that is both illegal and not tolerated, and how these differences affect the value in the particular context. Any concerns should be noted and if the conclusion is affected, how and why the conclusion accounts for these factors should be explained.

Boundaries. There should be a description of any boundary disputes, tenure overlaps, or different usufruct rights on the land. The speaking valuation report needs to describe any discrepancy between the boundary on the ground and what is in the report.

Using innovative approaches and methods in the speaking valuation. If innovative approaches are used, they should be justified in the speaking valuation to the client. The use of para-valuers, innovative methods of gathering evidence about sales, using supplemental means for compulsory purchase valuations, and value research juries presenting a joint speaking valuation report are some examples of innovative approaches and methods and should be described in detail in the speaking valuation report. The reason why more traditional valuation approaches were not used should also be given.

However, when valuing unregistered lands there will be cases where, after performing to standard, the valuer realizes that they cannot deliver enough evidence to adequately support a reliable estimate of value and that there are significant weaknesses in the report. If the conditions specified by the contract and the intended use and users of the valuation are beyond the ability of the valuer or the level of data available, the valuer should discuss this with their client. The scope of work should be amended or the valuer should exit from the assignment because knowingly producing

a negligent, fraudulent or misleading report violates IVS and professional ethical standards. This should be stated in the speaking valuation in a way that the client is sufficiently informed to make the appropriate adjustments for risk.

Finally, the co-evolutionary development of 1) this flexible scalable valuation process and 2) ever-improving access to data can result in the increasing transparency of the land market and increased quality of speaking valuations. This would make valuations ever more transparent to multiple stakeholders. It would also increase the likelihood of providing the professional, reasonably reliable, transparent, just and unbiased land-related information necessary for market participants to make properly informed decisions. This in turn would allow more potential for the local and national economies to grow based on a more efficient and transparent land and property market.

5.3.2 VISIBLE RATHER THAN FIXED BOUNDARIES

Cadastral surveys give legal evidence on registered land rights. It is unlikely that there will be cadastral evidence on unregistered lands. Alternative methods for ascertaining boundaries will be needed for valuations based on visible boundaries. Alternative methods have been used for hundreds of years. In many established communities, most community members already know the land boundary that has been accepted for generations.

The use of drones and other technologies, such as Digital Earth, cheap and easy to use aerial and satellite imagery can supply spatial information about what is being bought and sold. While a high degree of accuracy and certainty is required in the transfer of a registered right, the very nature of unregistered rights might mean that less certainty in spatial measurement for valuation

may still be sufficient. However, the use of alternative technologies should be subject to the appropriate disclaimers in the valuation report concerning possible inaccuracies and the reliability of these technologies.



Aerial imagery used as a field work map sheet with a georeferenced grid in Ethiopia. Image © Zerfu Hailu.



A vectorised field map showing the resulting cadastral map with parcel boundaries in Ethiopia. Image © Zerfu Hailu.

5.3.3 LAND VALUE CAPTURE: A CASE STUDY

The case study of Amaravati in Adhra Pradesh, India, is a best practice example on innovative approaches using value capture linked to other financial instruments as an alternative to land readjustment. A land-pooling scheme was established for the occupants of land that

was acquired to build a new city. The government then reconstituted the land, developed the infrastructure and handed over possession of developed plots to the landowners. Annual compensation, loan waiver, tax exemptions and government jobs to youth also formed part of the compensation to avoid land acquisition and the consequent expensive compensations. Valuation was critical in establishing choices between conventional compulsory purchase on the one hand, and a range of innovative financial instruments on the other hand, which satisfied the owners and occupiers sufficiently to allow the public sector-driven urban regeneration to go ahead. Valuation underpinned its financing. This case study demonstrates the kind of valuations that are in demand in big cities around the world, as well as the range of financial instruments based on a sound valuation.

5.3.4 OTHER INNOVATIVE APPROACHES

When it comes to evidence, the strongest is that of directly comparable sales or rentals. However, in the absence of sufficient credible and reliable evidence for unregistered lands, community discussion, perceptions and other inclusive and participatory approaches, such as those described in the Namati case of customary land, could be used. Also, under certain circumstances, moots, value juries and citizen value juries could be used to obtain market price. The FAO technical guide on valuation also proposes valuation methods for non-market valuations, including choice modelling, contingent, participatory approaches, citizens jury and numeraire (2017). Additional work still needs to be done to pilot all these methods. Many of these methodologies have very high time / costs and would only be applicable for large-scale valuations, and in cases where data is insufficient to produce a reliable and credible value conclusion using more traditional approaches.

5.4 VALUATION OF COMMUNAL/CUSTOMARY LAND

This is a guide and not a manual. Some of the remedies and methods for the valuation of unregistered customary/communal land are described here as a way of illustrating how the framework outlined in the guide applies to one example, namely customary/communal land.

Different jurisdictions have different forms of communal rights in unregistered lands. This land is called by different names, such as customary, communal, indigenous – including tribal, clan, group and extended family rights. In many, but not all, jurisdictions these are legal rights even if they are not registered rights. Some valuation methods have application in all communal land and others are specific.

Identity issues are particularly important in communal land with regard to geography, religion, family, cultural and religious heritage sites and graves. There are numerous examples of this not being done when a community has been removed from its land, and which can be understood as human rights abuses. Valuers should take identity and society issues into account during a valuation as part of the spirit of the principle that at worst the dispossessed people should be no worse off after the expropriation than before. The valuation report should clearly state what was and was not performed as part of the analysis.

Active land markets are beginning to pick up pace on communal land under several conditions, such as:

- When the community grants leases. These can be of any term, up to or even beyond the 99-year lease often considered as being within 90 per cent of freehold value in formal economies. Sometimes

this is associated with the large-scale land-based investment known as land grabbing (Hall, 2011).

- There are also dynamics in rural areas around local land sales and rental markets within communal land areas (Chimhowu and Woodhouse, 2006).
- When cities and small market towns extend into adjacent communal areas.
- During ribbon development associated with infrastructure.
- During and immediately following conflict linked to land grabbing, displacement and migration.

The valuation of communal land is challenging because usually little or no market data exists, the legal or ownership rights are generally not clearly defined, and conflict may emerge from the valuation. Often owners of unregistered communal land rights will need access to readily-accessible, affordable, competent, unbiased land advice because they do not understand land as a commodity. It is possible that unique and unconventional valuation methods may be needed, such as the ransom method, payment for peace method, on-market economic or ecological valuation methods, Coase's Theorem, contingent valuation method and cost benefit analysis. Work in these areas should be framed by IVS and international human rights standards.

The valuer's role is to assume that both parties to the transaction have the required market knowledge in terms of the IVS definition of market and social market value. The valuer does not have to know whether or not the specific vendor or purchaser have such competencies. The valuation is to estimate the amount that should be obtained if the parties possessed those competencies to the degree sufficient to meet the IVS market value definition.



Women in Malawi harvesting wood in communal forest. Photo © Ripple Africa.

5.4.1 DETERMINING THE VALUE TO OWNERS OF RURAL COMMUNAL LAND WITH NATURAL RESOURCES (NAMATI)

An international non-government organization, Namati, has documented a valuation-related exercise to assist a customary community to be more knowledgeable about the value of their land to them (Knight, Brinkhurst and Vogelsang, 2016). The Knight et. al (2016) case study, described below in terms of steps, can be adapted for most rural communal land with resources.

The exercise should be done as part of public meetings so that customary owners can gain an understanding of the monetary value of their land to them and make more informed decisions about potential sales. With respect to the valuer, if the amount estimated by the community exceeds, or is very different from, the amount estimated by the valuer, the valuer should consider his/her assumptions made concerning highest and best use and what 'prudent' means under these conditions. The difference in the amount might also be because of the additional values linked to the social market values.

BOX 2. STEPS FOR CUSTOMARY LANDOWNERS TO DETERMINE THE VALUE OF THEIR LAND (NAMATI)

Step 1: Generate a list of resources that community members get from the common land. Get community members to brainstorm all the main activities or uses, and all the natural resources that can be found on the land. Select the 7 to 10 most-used resources that every household gathers daily or weekly.

Step 2: Determine the unit of measurement for each resource. To agree on a common unit of measurement (e.g. kilo or bundle), ask people how the resource is usually sold or bought in the market. Determine how many units are used by a typical family annually

Step 3: Estimate the total cost per year for the whole community, by finding out from the community how many families/households live in the community and use the common areas. This number is an estimate of the total cost for the entire community to replace the resources it currently gets from its common land. It should be a surprisingly large number – and it is likely still a low estimate because there are other resources and uses that are not included.

Step 4: Reflect. After completing these calculations, ask community members to envision what their lives would be like if they no longer had access to their community land; for example where they would get firewood, wild fruit and other resources, how they would earn money to buy items from the market, and whether, after knowing the value of what they get from the community land, they would consider selling or renting it, and at what price.

With regard to the Namati experience, Knight et al. (2016) state that this list is only meant as a simple indicative guide, a preliminary step to negotiations with potential purchasers. To a professional valuer it may also be a step towards a capitalization of net income approach, common in land and location-related business valuations. However, additional aspects need to be considered in the valuation and compensation, such as the highest and best use of the land and matters that may be compensable under national law.

Some useful lessons for valuers working with local organizations and para-valuers can also be drawn from the Namati experience:

- Capacity development of customary parties is likely to be essential.
- There are a wide range of market and social market value assets.
- Valuation can be done of unregistered customary land, but it may need innovative valuation methods.
- Special attention is needed to maintain IVS standards for market and social markets with regard to all aspects of the market value definition.
- Human rights international standards should form part of the ethical framework of the valuer, given the potential human rights abuses.

This example is merely an illustration for this guide of what could be involved in the valuation of unregistered lands. Much more work needs to be done to produce manuals on how the different types of unregistered lands in developing countries could be valued, drawing from the experience of valuers working in the field.

WAY FORWARD

This guide is intended to encourage policy makers and valuation practitioners in developing countries to work in valuing unregistered lands. It provides an understanding of internationally accepted valuation standards, legal frameworks and international human rights standards. There is now a consensus within the international valuation industry that the valuation of unregistered lands can be done and that these valuations should be based on the International Valuations Standards, including social market values where appropriate. This is important given that there is an increasing demand for this kind of valuation to support the global agenda to increase food security, manage climate change, for city extensions and densification, slum upgrading, for women's land tenure security, and for conflict management. The valuation of unregistered lands is in the critical path of delivering many of the Sustainable Development Goals.

The guide builds on the emerging thinking by RICS (2017) and FAO (2017) on social market value. Valuation should go beyond the usual definition of market value to include social market values when valuing unregistered lands, as the social, cultural, religious, spiritual and environmental values may be key in these areas. Some of these have a transaction value. Others are non-market and cannot be commoditized. Combining conventional market valuation methods with non-market methods will give fairer estimates of value in cases where social market values are significant.

There is general acknowledgement in the major land/valuation-related international human rights standards that for global, regional and national development and poverty alleviation some compulsory land acquisition, involuntary resettlement and compensation will need to take place. However, this should be kept to a minimum and not involve forced evictions and unfair compensation, among other things. IVS compliant

valuations are needed that take into account human rights frameworks such as the NUA, VGGT, African Union Land Policy Initiative and others described in this document, including the safeguards of IFIs. These should be reflected in the valuer's ethics, research, methods, their identification of value for fair compensation and their valuation report to the client. Valuations that follow these standards are considered important to correcting abuses around land acquisition, fair payment and involuntary resettlement and compensation, particularly where they impact the poor.

This guide gives a practical framework for developing countries. Valuers in developing countries should consider domesticating the principles and policies outlined in the guide in their legislation, regulations and in their work. This guide is a first step for the valuation of unregistered lands in developing countries and the valuation industry is encouraged to continue to take the next steps involving the development of valuation manuals where they see a need.

The guide argues that the complexity of the valuation and its cost should be related to the value of the land and the purpose of the valuation, and that this needs to be a core fit-for-purpose principle for future-proofing the industry. It also reminds us that unregistered lands are connected to many poor people. For these reasons, the affordability of the valuation is raised in the guide. Some ideas are suggested that may help to decrease the cost of valuation, such as standard-format reports and the use of new technology. Fit-for-purpose valuation is an emerging demand for transfers, acquisition, compensation and taxation. Valuation is crucial for efficient land markets across the spectrum of values. The industry might need to do some more thinking on how to deliver both fit-for-purpose – which is about flexibility, scaling up over time and incremental improvements – and pro-poor valuations.



Community members identifying boundaries during a mapping exercise in the Philippines. Photo © Philippines Alliance.

Part of this work should involve improving the publicly available land data needed for valuation. This should include strengthening the land administration system and its data to allow more people into the system, which would make the valuer's job easier and improve the efficiency of the land markets.

Many developing countries need large-scale capacity development to be able to value unregistered lands at scale. This guide is intended to support them to identify the key principles and practices needed to incrementally build their valuation policies and systems to take on this challenge. The valuation of unregistered lands is already being done in many developing countries. They should build on this experience and use this guide to build capacity, introduce valuation policy, improve and monitor standards and, over time, create an appropriate regulatory framework and national group of valuers with experience in this area.

At the same time, the training of valuers, who work in developing countries on unregistered lands needs to go beyond technical issues so that they are more

competent in valuing unregistered lands and the social markets linked to it, and be aware of international human rights standards.

The valuation of unregistered lands is a challenge to developing countries at the national level and to the international valuation industry as a whole. This guide is a first attempt to put some of the detailed principles and practices on the valuation of unregistered lands in both urban and rural areas together. It also links practical approaches with human rights questions on this issue, key for compulsory purchases.

Finally, this valuation of unregistered lands guide serves to strengthen the implementation of the continuum of land rights, a key tool to understanding and strengthening security of tenure for all, especially women. Governments, policy makers, the valuation industry, practitioners, capacity development institutions, and other interested parties should use this guide to help achieve the SDG goals of conflict prevention, food security, gender equity, and sustainable urban and rural development.

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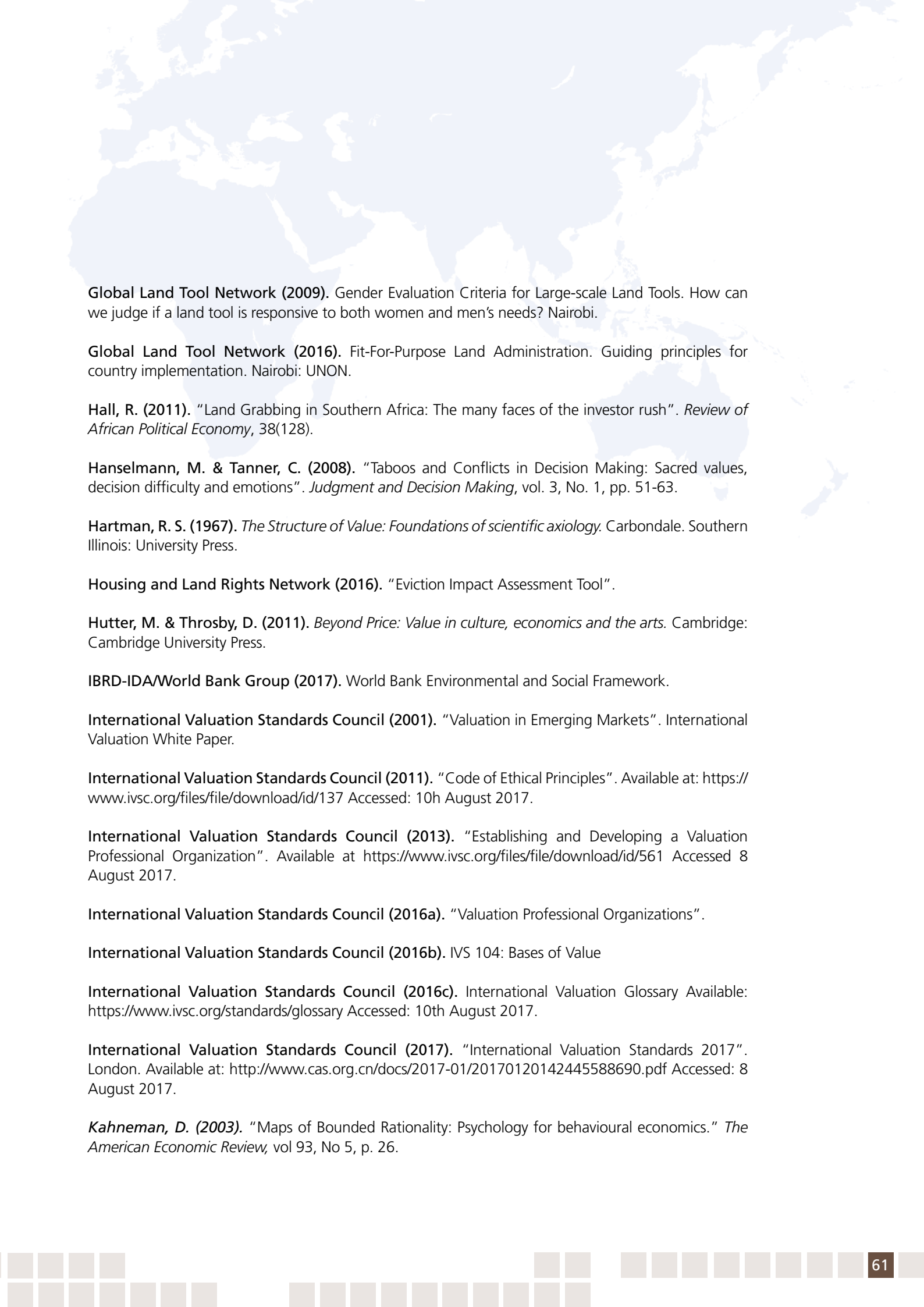
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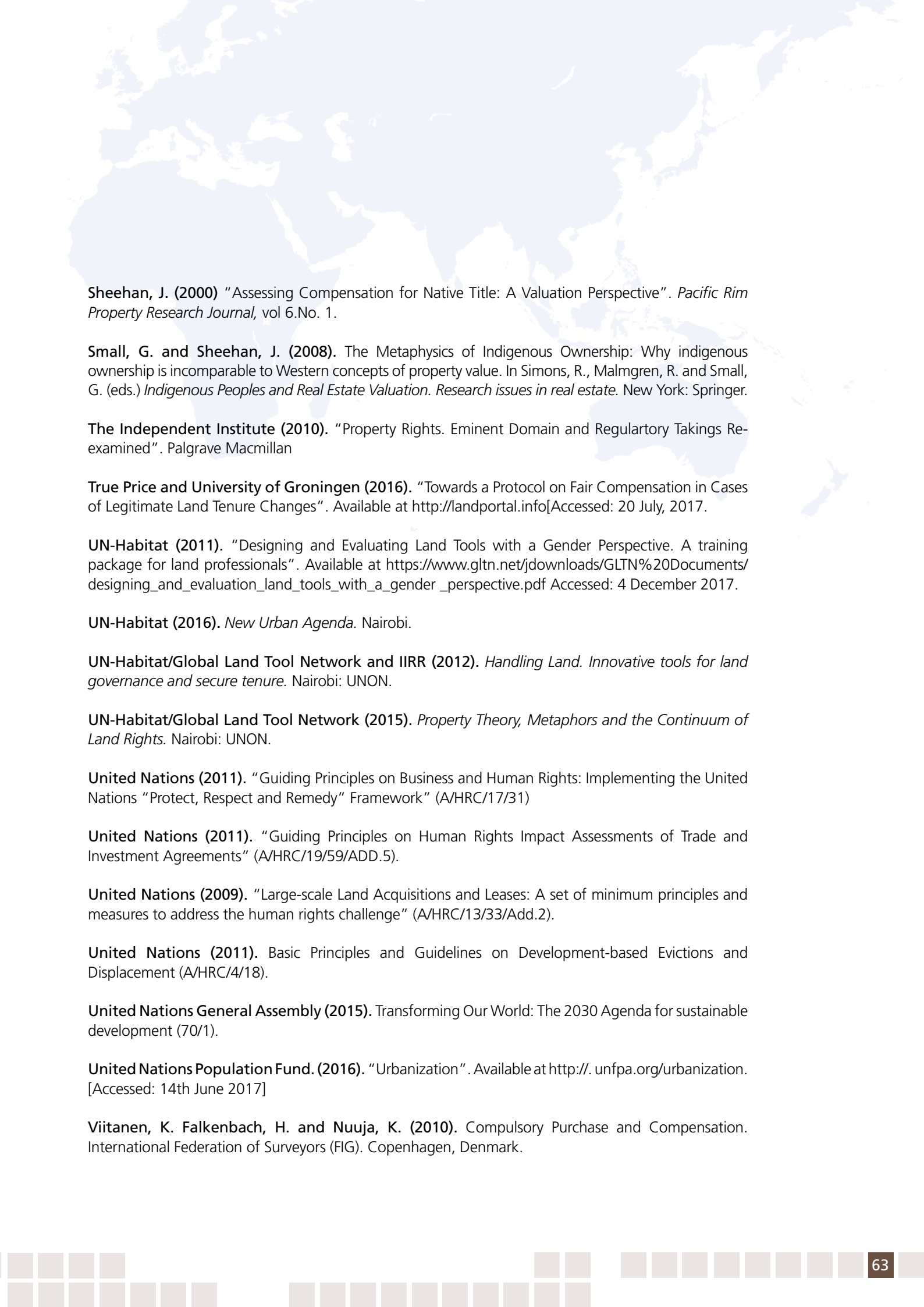
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The Global Land Tool Network (GLTN)

GLTN aims to contribute to poverty alleviation and the Sustainable Development Goals through land reform, improved land management and security of tenure. The Network has developed a global land partnership. Its members include international civil society organizations, international research and training institutions, development partners and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. For further information, visit the GLTN website at www.gltn.net.





ABOUT THIS PUBLICATION

In many developing countries, only 30 per cent of land rights are registered. This publication aims to support developing countries that have unregistered lands to be able to value these lands. It is intended for policy makers, valuation practitioners, other land professionals and various stakeholders involved in the valuation of unregistered lands. It highlights the need to address the challenges related to valuing unregistered lands.

This publication provides key principles and policy guidance for people to progressively undertake valuations of unregistered lands. It is intended to assist in the achievement of professional-level valuations of unregistered lands and enable users of this guide to discern when this has not been achieved. Lessons learnt and solutions should then be documented leading to detailed manuals on how to better value unregistered lands in the future, and thereby significantly contribute to sustainable development objectives.

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